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NEW HAMPSHIRE AS A ROYAL PROVINCE

BY

WILLIAM HENRY FRY, Ph.D.

Sometime Schiff Fellow in Political Science

New York

COLUMBIA UNIVERSITY

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To

MY MOTHER

IN LOVING ACKNOWLEDGMENT OF ALL THAT SHE
HAS DONE FOR ME
THIS WORK IS MOST AFFECTIONATELY
DEDICATED

PREFACE

In the numerous references accompanying the body of the work, the sources from which the material for this monograph has been drawn, are clearly indicated. Moreover, so far as it has been deemed practicable, the references are not only very full but also specific, bearing directly upon the statement made or the point at issue. Both in consequence of the important bearing which the period prior to 1680 has upon that which followed it, and in order also to do away with many long explanatory notes in the succeeding chapters, the introductory chapter is somewhat longer and more complete than might perhaps have been expected. In considering the provincial period, the topical method of treatment has been adopted because, among other things, the subject under review can in that way be treated connectedly and as a unit and greater clearness can thus be obtained. Naturally in a work of this character many matters of interest and some also of importance have necessarily been omitted. Some of these, however, have been treated more or less fully by other writers, while some are of such a nature that they cannot be satisfactorily dealt with, if the discussion is confined to the work of a single province.

Though not intended originally for publication, the matter in the appendix, particularly the dates and references there given, will, it is hoped, prove to be both acceptable and useful.

For the many favors granted and courtesies extended to me by librarians, public officials and others, due acknowledgment is here made. To Professor Herbert L. Osgood, of Columbia University, however, my warmest thanks are due for the kindly interest which he has manifested throughout, and for the care with which he has read both the manuscript and the proof.

Wm. Henry Fry.

New York, *Dec., 1908.*

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CHAPTER I

INTRODUCTION

While the South Virginia, or London Company, under the charter granted by the king in 1606 for the settlement of the territory included between the thirty-fourth and the forty-fifth parallels of latitude, succeeded in establishing the first permanent English colony in the New World, the North Virginia, or Plymouth Company, completely failed to secure even a foothold in that part of the grant which was specially assigned to it for development. The consequence was that, at the close of the second decade of the century, there was not a single English settlement in the region to which, but a few years before, Captain John Smith had given the name New England.

Chiefly through the persistent and determined efforts of Sir Ferdinando Gorges and a few others, a new charter was obtained for the Plymouth Company in 1620.[1] By virtue of it the corporation, which was now officially styled "the Council established at Plymouth, in the County of Devon, for the planting, ruling, ordering and governing New England in America," was granted exclusive jurisdiction over, and absolute possession of, all the land lying between the fortieth and the forty-eighth degrees of north latitude from the Atlantic Ocean to the South Sea. Within those limits it could establish and govern settlements, and lease, sell and otherwise dispose of its territory and its privileges either to individuals or to corporate interests.

[1] *New Hampshire State Papers*, vol. xxix, p. 3.

Some time after the charter was issued the Council began to grant tracts of its vast domain to such individual or corporate adventurers as applied for the same, and this policy it continued to pursue until the charter was surrendered to the king in 1635. The grants were both public and private in character, and the amount of land conveyed by them varied widely. Sometimes large tracts were granted away; at other times but a few hundred acres. Among the recipients of the larger grants were Capt. John Mason and Sir Ferdinando Gorges, both of whom were particularly interested in this part of the continent, while among those who received small grants and settled in what is now known as New Hampshire were David Thomson and Edward Hilton.

In the fall of 1622,[1] David Thomson received from the Council for New England, as the Plymouth Company was popularly called, a grant of 6,000 acres of land and one island in New England. The following December he entered into an agreement[2] with three merchants of Plymouth, England, which provided, among other things, for the transportation to New England of himself and seven others. As soon as convenient, a suitable place for a settlement was to be selected and such buildings erected as might be needed. Farming, fishing and trading were then to be carried on as a joint enterprise. Adjoining the buildings, a tract of 600 acres was to be set off, which, at the end of five years, was to be divided equally among the parties to the agreement. At the end of that period, too, the residue of the 6,000 acres and the island were to be divided among the partners into four parts, of which three were to go to Thomson.

[1] *New Hampshire State Papers*, vol. xxv, pp. 715, 734.

[2] *Ibid.*, vol. xxv, p. 734.

In pursuance of this agreement,[1] Thomson came over and settled, in the spring of 1623, at a place generally known as Little Harbor. As far as can be ascertained with any degree of certainty, he is the first European who ever settled within the present confines of New Hampshire. To what extent the provisions of the agreement were carried out it is impossible to say, for practically nothing is known of what transpired in the tiny settlement. From the most reliable accounts, however, it appears that Thomson remained there until about 1626, when he removed to an island in Boston harbor, which still bears his name. Whether the settlement was abandoned upon his withdrawal, or continued by others, is uncertain.

On the 9th of March, 1622, Mason received from the Council a grant of all the land extending along the seacoast from the Naumkeag to the Merrimac river.[2] To this strip, which is now entirely within the limits of Massachusetts, he gave the name Mariana. On the 10th of the following August he and Gorges received a joint patent for all the territory lying between the Merrimac and the Kennebec rivers.[3] This they agreed to call Maine. Seven years later they seem to have come to some agreement respecting the division of that grant, for on November 7th, 1629, Mason secured a separate grant from the Council of that part of the territory which lay to the south of the Piscataqua.[4] In honor of the English county of Hampshire, where many of the best years of his life were spent, he called it New Hampshire. Just then Kirke arrived in London from his successful expedition against Canada, bringing Champlain a prisoner. With the view of obtain-

[1] *New Hampshire State Papers*, vol. xxv, pp. 714, 717.

[2] *Ibid.*, vol. xxix, p. 19.

[3] *Ibid.*, vol. xxix, p. 23.

[4] *Ibid.*, vol. xxix, p. 28.

ing a share of the rich fur and peltry trade of that country, which they had reason to believe would remain in the hands of the English, Mason, Gorges and some others obtained, on November the 17th, a rather indefinite grant of land lying to the west and northwest of the Merrimac and Kennebec rivers, bordering on Lake Champlain and extending thence westward half-way to Lake Ontario and northward to the St. Lawrence.[1] On account of the number of lakes which it was supposed to contain, the grantees called the country Laconia. As it was then believed that the lakes could be easily reached from the New England coast by sailing up some of the rivers that there flow into the Atlantic, the possessors of the grant were given permission to use any of the rivers, or seaports, or pass through any lands then under the control of the New England Council "without any let, trouble, interruption, molestation, or hindrance." Furthermore, in order that they might have suitable accommodations near the coast for carrying on their business, it was provided that they might choose "in any of the ports, harbors or creeks in New England, lying most commodious for their passage up into the said lakes," one thousand acres of any land hitherto unappropriated.[2] Instead of taking advantage of this clause of the patent, those that were sent over by the Laconia partners established themselves upon the lands which had been settled and improved by David Thomson. Soon after the grant was issued Mason and Gorges, in order to advance their interests, formed with six merchants of London the so-called Laconia Company. From time to time they sent over both men and supplies. Capt. Walter Neale was made governor and Ambrose Gibbons factor. Two new plantations were

[1] *New Hampshire State Papers*, vol. xxix, p. 33.

[2] *Ibid.*, vol. xxix, pp. 37, 38.

started, one at Strawberry Bank, where a large house was built, which later on was referred to as Mason Hall, and the other at some falls on the Newichwannock river, some distance further away, on the other side of the Piscataqua, where a little later some saw-mills were set up and lumbering was carried on. Several attempts were made to find an easy route to the lakes, but these were all unsuccessful. Although their chief reliance was the fur-trade, fishing was also an important industry. Land was cleared and some attention was devoted to the cultivation of the soil and the manufacture of potash. Moreover, cattle-raising received considerable attention. Clapboards and pipe-staves, too, were made. Salt was manufactured on a small scale and vines were imported. A search for iron-ore was also made. On November 3, 1631, a patent was obtained from the Council which confirmed them in possession of the lands they then held and granted them a definite amount of land on both sides of the Piscataqua.[1] That part of the grant south of the Piscataqua had a water frontage on three sides and embraced all the land north of a line drawn from the lower falls on Lamprey river to a point at or near Rye Ledge on the Atlantic coast, while the part north of the river consisted of a strip three miles wide, beginning at a point on the coast fifteen miles to the southeast of the harbor's mouth, and extending along the shore and up the river for a distance of thirty miles.[2] "The Isles of Shoals and the fishings thereabouts" were also conceded to the grantees. Although considerable money had been invested in the undertaking, the returns were small, and when a heavy loss was incurred as a result of an ill-timed fishing voyage in 1632, most of the Laconia partners became so

[1] *New Hampshire State Papers*, vol. xxix, p. 39.

[2] *Ibid.*, vol. xxix, p. 41; vol. xxv, p. 679.

discouraged that they decided to proceed no further until Capt. Neale reported to them in person.[1] Accordingly, in 1633 Capt. Neale went to England and directions were given to certain men to take charge of the several plantations. A few months later the partnership was dissolved and arrangements were made for a division of the stock and lands of the company among the partners. Concerning the dissolution, Mason said, in a letter to Ambrose Gibbons, that he was sorry "so good a business (albeit hitherto it hath been unprofitable) should be subject to fall to the ground. . . ." "I have disbursed," he continued, "a great deal of money in the plantation and never received one penny, but hope, if there were once a discovery of the lakes, that I should, in some reasonable time, be reimbursed again."[2] Mason and Gorges continued to develop their allotments, but each now acted independently of the other. The former confined his attention to the country south of the Piscataqua and to the plantation at Newichwannock, while the latter devoted himself to the development of the tract between the Piscataqua and the Kennebec.

In the grants of the tracts designated as Mariana, Maine, New Hampshire and Laconia, it was stipulated that the lands so granted should be held, after the manner of East Greenwich in England, in free and common socage and not *in capite* or by knight's service. In other words, the land was not held immediately of the king nor by a military tenure. Moreover, unlike the latter, where the services were, from their very nature, precarious and uncertain, the tenure by which these lands were held was by services that were certain, fixed, and determinate.[3] Its chief obligations

[1] *Prince Society Publications*, vol. xiii, p. 305.

[2] *Ibid.*, vol. xiii, p. 331.

[3] *Blackstone's Commentaries*, book ii, pp. 60–89.

were fealty and rent, and its liability escheat. Furthermore, the territory could be divided up, transferred, entailed, leased and sold just like an ordinary estate of land, and, as such, it was subject to all the conditions of natural inheritance. In all four grants, two-fifths of all the gold and silver found was expressly reserved, one-half for the king and one-half for the grantors.[1] Furthermore, mention was made in all of an annual rent. This, however, was but nominal. In the grants of Mariana and New Hampshire the sum specified was five shillings a year, and in that of Maine it was fixed at double that figure, while £10 was the amount designated in the Laconia grant.[2] In the first three grants there was attached to the clause specifying the rent the words "if it be demanded," which would imply that in those cases at least it need only be paid when actually demanded by the grantors. Moreover, all the grants contained a provision, stipulating that the grantee or grantees, as the case might be, should establish such a form of government upon the premises as would be consistent with, and agreeable to, the laws and customs of England, and if charged at any time with neglect of duty in this matter, he or they were to institute the necessary reforms according to the directions of the President and Council of New England.[3] In the grants of Maine, New Hampshire and Laconia there was an additional clause to the effect that, in default of this, any of the aggrieved inhabitants upon the grant might appeal to the chief courts of the President and Council.[4] All these provisions, how-

[1] *New Hampshire State Papers*, vol. xxix, pp. 21, 22, 26, 27, 31, 32, 35, 36.

[2] *Ibid.*, vol. xxix, pp. 22, 26, 31, 35.

[3] *Ibid.*, vol. xxix, pp. 22, 27, 32, 37.

[4] *Ibid.*, vol. xxix, pp. 27, 32, 37.

ever, transferring powers of government to the grantees were invalid because the Council for New England could not transfer governmental powers to any of its grantees, as a special charter from the king was always necessary for the transmission of such powers.[1] According to certain provisions in two of the grants—those of Maine and Laconia—the grantees were under obligation to build a fort, furnish it with a competent guard, and settle at least ten families upon the place, failing in which they were to forfeit £100 sterling to the President and Council.[2] Then, again, in all the grants it was provided that any land which was alienated to a foreigner or to a foreign nation "without the special license, consent and agreement of the President and Council" should revert to the Council for New England.[3] Finally, in each grant some particular person was authorized to put the grantee in possession. Thus, in the grant of Mariana, Ambrose Gibbons was the person appointed for that purpose, and in that of Maine it was Capt. Robert Gorges. In the New Hampshire patent, Capt. Walter Neale was the person designated, while in that of Laconia, Edward Godfrey was the one named for that service.[4]

From the time of its establishment in 1620, the Council for New England encountered considerable opposition. As the clamor in the nation against monopolies became more pronounced, this naturally increased and was more sustained. Charges were frequently made against the Council and it was often assailed before the privy council. Then, too, settlements had sprung up within the territory, which threatened to defeat the great object which some of the more energetic members had most in view. Moreover,

[1] *New Hampshire State Papers*, vol. i, p. 37.

[2] *Ibid.*, vol. xxix, pp. 27, 37. [3] *Ibid.*, vol. xxix, pp. 23, 27, 32, 37.

[4] *Ibid.*, vol. xxix, pp. 23, 28, 32, 38.

some of the latter had spent considerable sums in various undertakings, in the hope of deriving some substantial advantage from the grants they received, but in this they had been disappointed, and they now saw no better prospects of success in the future. Weakened by the continued attacks of its enemies, the Council was neither in a position to enforce its demands nor properly control its affairs in the New World. Realizing that its position was almost hopeless, the Council resolved upon a change. According to the plan which was now devised, the entire territory was first to be divided into provinces, after which the charter was to be surrendered to the king, who was to confirm, by new grants from himself, the several divisions thus made and appoint a general governor for the whole country. Accordingly, in February, 1635, the Council held a meeting, at which the members divided among themselves all the territory embraced within the limits of their grant.[1] In this apportionment Capt. Mason, who had become a member of the Council in 1632, received all the land covered by his former grants of Mariana and New Hampshire. In pursuance of an agreement entered into at the same meeting the several divisions were, on April 18th, leased out for a term of 3,000 years to various persons, really in trust for those to whom the lands had been allotted, although this was not mentioned, and four days later deeds of feoffment and of bargain and sale were executed in favor of the actual grantees of the several divisions.[2] The person to whom the lease of Mason's lands was made out was John Wollaston, his brother-in-law, who, by an indenture, dated the 11th day of June, formally transferred the lands to Mason

[1] *Prince Society Publications*, vol. xii, p. 204.

[2] *Ibid.*, vol. xii, pp. 26, 204, 206; *New Hampshire State Papers*, vol. xxix, pp. 60, 64; vol. xvii, 488.

again.[1] The last deeds which were issued by the Council for the purpose of confirming the grantees in possession of their allotments were two in number, both of which were executed on April 22d, 1635.[2] Not long afterwards the charter was surrendered to the king.[3]

Thus everything was done to make the several grants binding and impregnable from a legal standpoint.[4] From an examination of the lease and the two deeds, it is to be noted that they are much shorter than the previous instruments of conveyance and lacked some of the details characteristic of the latter. Thus, in substance the lease stated that, in pursuance of an agreement of February 3d, and for other good causes and considerations, the lands were leased to John Wollaston for a term of 3,000 years, with all the rights and privileges properly appertaining thereto; that one-fifth of any gold or silver found was to be reserved to the king, and that the annual rental was one peppercorn.[5] Of the two deeds which were executed on April 22d, the one which was in its nature an indenture of bargain and sale, simply stated that the lands were granted and confirmed to Capt. Mason, in pursuance of the above agreement, with all the rights and privileges incident thereto, "for a competent sum of money," and other good causes and considerations, saving one-fifth of any gold or silver found, which was reserved for His Majesty.[6] The other deed, which was really a deed of feoffment, stated that the lands were granted and confirmed to Capt. Mason, in compliance with the same agreement as above mentioned

[1] *New Hampshire State Papers*, vol. xxix, pp. 66, 68.
[2] *Ibid.*, vol. xxix, pp. 62, 64.
[3] *Provincial Papers*, vol. i, p. 140.
[4] *Prince Society Publications*, vol. xii, p. 216.
[5] *New Hampshire State Papers*, vol. xxix, p. 60.
[6] *Ibid.*, vol. xxix, p. 62.

and for sundry causes and considerations, with all the rights and privileges properly appertaining thereto, and also with power of judicature in all cases arising within the limits of the grant, whether these were of a criminal, capital or civil nature, saving, however, to the Council and their successors the right to hear and determine any appeals in judicial cases. Moreover, it was provided that the lands should be held of the Council and their successors "as of gladium comitatus; that is to say, by finding four able men, conveniently armed and arrayed for the war, to attend upon the governor of New England for the public service within fourteen days after warning given," yielding and paying to the king one-fifth of any gold or silver found within the limits of the grant. Furthermore, it stipulated that Henry Josselyn and Ambrose Gibbons, or either of them, should put the grantee in possession of the premises. In both the lease and the deeds, the entire tract conveyed between the Naumkeag and the Piscataqua was designated as New Hampshire, a name which hitherto had been given only to the part between the Merrimac and the Piscataqua.[1] As it was the king's intention to appoint a general governor for New England, Sir Ferdinando Gorges was picked out for the place, while Capt. John Mason received a commission as Vice-Admiral of the same.[2] Before, however, the necessary arrangements were made for the inauguration of the new government, Mason, who was one of its most enthusiastic supporters, died. Affairs in England were fast approaching a crisis and soon so engrossed the attention of the king and his advisers that nothing further was done. The result was that the scheme for the establishment of a general government in New England was laid aside. Al-

[1] *New Hampshire State Papers*, vol. xxix, pp. 63–66.

[2] *Prince Society Publications*, vol. xii, p. 28.

though it appears that Mason intended to procure from the king a royal charter, granting him governmental powers over the tract deeded to him by the Council, his death occurred before the necessary legal steps were completed.[1]

In his last will and testament Mason made the following disposition of his possessions in New England:[2] To the town of King's Lynn, his birthplace, he directed that 2,000 acres of land be given, provided at least five families were settled upon the grant within five years after his decease and the profits derived from the property were devoted to the relief of the poor of the town. Towards the support of a free grammar school in New Hampshire he left 1,000 acres of land, while for the maintenance of "an honest, godly and religious preacher there" he set aside a like amount. To his brother-in-law, John Wollaston, he devised 3,000 acres, and to Robert Tufton, one of his grandsons, he bequeathed the so-called manor of Mason Hall. To his granddaughter, Ann Tufton, he gave a tract on the Kennebec known as Masonia, while the balance of his possessions in the New World he bequeathed to his eldest grandson, John Tufton, but in case of his death without issue it was to revert to the latter's brother Robert. Until, however, the grandsons attained their majority and the granddaughter either married or became of age, all the rents and other profits were to go to the testator's widow for her own use and enjoyment; but in the event of her death before they were eligible to enter upon the property assigned to them, the estate was to be administered for their benefit. Furthermore, in the case of the grandsons, it was stipu-

[1] *Provincial Papers*, vol. i, pp. 36, 37 *et seq.*; vol. xxix, p. 69.

[2] *New Hampshire State Papers*, vol. xxix, p. 88; *Prince Society Publications*, vol. xii, p. 392. Will dated Nov. 26, 1635; proved Dec. 22, 1635.

lated that under no circumstances should they take possession of their shares until they took the surname of Mason. Needless to say, many of the provisions of the will were, as will be seen later, never carried out.

For some time after Mason's death his interests in New Hampshire continued to be represented by Henry Josselyn. In 1638 his wife entrusted the management of his estate here to Francis Norton,[1] but when she found that the expense far exceeded the income she temporarily gave up the attempt to manage the property and left the servants, who were clamoring for their wages, to take care of themselves. Thereupon, the latter divided up the houses, cattle and goods among their own number, and apparently took as much land as they needed,[2] and then claimed it was their own. As for Norton, he withdrew to Massachusetts and settled in Boston, where he is said to have sold 100 head of cattle which he brought from Mason's estate.

Apparently the inhabitants on the lower Piscataqua early felt the need of some form of civil government, for some time after Captain Neale went away, Hubbard informs us that they entered into a combination "for the better enabling them to live orderly one by the other." For many years Francis Williams was at the head of the government, being styled governor. He appears to have been a prudent and sincere man and was well liked by the settlers. Some time previous to 1643 a second combination seems to have been entered into, but the causes which made a change necessary are not known. In 1641 all the settlements on the river were incorporated with Massachusetts.

As most of the planters were attached to the Church of

[1] *New Hampshire State Papers*, vol. xxix, p. 98.

[2] Belknap, *History of New Hampshire*, vol. i, p. 39; *Provincial Papers*, vol. i; *New Hampshire State Papers*, vol. xxix, *passim*.

England, preparations were early made for the establishment of an Episcopal church. In time a chapel and a parsonage were built and fifty acres of land were set aside as a glebe.[1] An Anglican clergyman, Rev. Richard Gibson, was then invited to be their first pastor, but after he had been in the place a short time the Boston authorities determined to silence him. Accordingly he was summoned before the General Court for "scandalizing the government there and denying their title," but "upon his submission and in consideration of his being a stranger and intending to leave the country," he was discharged. Shortly afterwards he left for England.[2] As no one was appointed to succeed him, the chapel, the parsonage and the glebe remained for a time unoccupied. Later they were used by the Puritan missionary ministers, who were sent to Portsmouth, and finally all passed into the possession of the Rev. Joshua Moody, the first regularly settled Puritan minister there.

Soon after Massachusetts extended her authority over the settlement some Puritans came thither and, somehow or other, possessed themselves of the principal offices of trust and power, and allotted among their own number a good part of the town's common lands. Naturally the original settlers resented the intrusion and considerable ill-feeling was produced. Finally, in 1651, steps were taken with the view of withdrawing from Massachusetts altogether and setting up an independent government. Hearing of this,[3] the governor of the Bay directed Capt. Wiggin "to search out the truth of these actings and to find out the particular persons that were interested in this design, and the person whom they nominate to be their

[1] *Annals of Portsmouth*, p. 26.
[2] *Provincial Papers*, vol. i, p. 195.
[3] *Ibid.*, p. 27.

governor, that accordingly we may put that power which God hath given us to prosecute legally against them." Furthermore, "if upon search and good testimony," he observed "any to be resolute in their way and high in their expressions," he was commanded to seize one or more of them and send them to Boston "to answer their rebellion at the General Court." As might have been expected, the attempt to withdraw from the jurisdiction of the Bay proved abortive.

In 1651 the inhabitants petitioned to be made a town. In reply, the Court granted an extension of their bounds toward Hampton. Two years later they again petitioned for a grant of a competent portion of land to make a township, and expressed a desire that the place be called Portsmouth, "being a name most suitable for this place and as good as any in this land."[1] The latter request was granted, but with regard to the former, the Court simply decreed that their southern line should extend from the sea by Hampton line to Winnicoett river.[2]

Some time before this Capt. Mason's widow had sent her agent to New England to protect her interests there. As he began to lay claim to some of the lands, the people grew very restless and uneasy. It may have been for the purpose of obliterating certain recorded transactions which may have been favorable to Mrs. Mason's claims that the book containing the early records of the town was mutilated and practically destroyed early in 1652. Whatever may have been the selectmen's motives, it is certain that most of the early records have disappeared. In the new town book is the following statement of what was done: "This night, January 13th, 1652, the selectmen examined

[1] Brewster, *Rambles about Portsmouth*, vol. i, pp. 22, 23.

[2] *New Hampshire State Papers*, vol. xxiv, pp. 265, 267, 269.

the old town book, and what was not approved was crossed out and what was approved was left to be recorded in this book and to be confirmed by the present selectmen." The records which were approved and left to be recorded in the new book, as there recorded, consisted of but a few scanty fragments, none of which dealt with the period prior to 1645.[1]

In April, 1652, it was ordered that the selectmen should have "full power to lay out land according as they think best for the commencing of the town."[2] At the same time, it was further ordered that all grants formerly made and recorded, although not signed by the townsmen, should be of force, and that the present townsmen should have power to confirm what could be proved to be grants and did not belong to any one else.[3] Early the next year, in pursuance of an order then made respecting certain lots which each inhabitant should have, forty-five grants of land were issued, varying in size from ten to fifty acres. A little later an order was passed that land should be laid out to the people at Sandy Beach, while towards the close of the year a committee was appointed to lay out "the plains." In April, 1654, an order was passed that there should be granted "to each house-lot eight acres to such as the town shall accept of to habitation."[4] During all this time, in addition to the grants made in compliance with these general orders, other grants were issued to such people apparently as applied for land.

Although it has been claimed by many that Edward Hilton and his associates began a plantation at Hilton's Point on the Piscataqua as early as 1623, and tradition tends to bear out such a claim, the first authentic information of

[1] *Portsmouth Records*, p. 21. [2] *Ibid.*, p. 13. [3] *Ibid.*, p. 16.
[4] *Ibid.*, pp. 20, 22, 29 *et seq.*

their presence there is given by Bradford, who says that Hilton contributed £1 in 1628 toward the settlement of the Thomas Morton affair.[1] How long, however, they had been there at that time or what the condition of the settlement was cannot be ascertained with any degree of certainty. As it was the intention of the leaders in the undertaking to transport more people and cattle there, it was probably thought desirable to protect their interests by having the land in and about the settlement formally conveyed to them by the Council for New England.

Accordingly, in March, 1630, Hilton received from the Council a formal grant of the territory.[2] In view of the construction which was later placed upon the words defining the limits of the grant, it will be well to set down the exact language of the patent on that point. As there described, the territory comprised "all that part of the river Pascataquack, called or known by the name of Wecanacohunt or Hilton's Point, with the south side of the river, up to the fall of the river and three miles into the mainland by all the breadth aforesaid." As Hilton had built his settlement upon the tongue of land now known as Dover Neck, it has been contended that the patent simply conveyed to him a compact mass of land, extending, as regards length, from the point up along the south side of the Piscataqua river to Quampegan Falls, and as regards breadth, from the river's bank back into the country a uniform distance of three miles. As thus construed, the grant would not conflict at any point with the so-called Piscataway patent,[3] which, as already mentioned in another connection, was issued the following year by the same Council to Gorges, Mason and their associates.

[1] *New Hampshire State Papers*, vol. xxv, p. 722.

[2] *Ibid.*, vol. xxv, p. 698.

[3] *Ibid.*, vol. xxix, p. 39.

Some time after receiving his patent Hilton sold out most of his interest in it. As the owners of the patent and the settlers upon the land were, for the most part, adherents of the Church of England, the officials in control of affairs in Massachusetts seem to have felt that the interests and the policy of the Bay government could best be advanced by bringing the grant into the possession of those who were more in sympathy with their views and motives. Accordingly, the governor and the magistrates wrote to some of their friends in England urging them to secure the entire patent. The result was that Lord Say, Lord Brooke and other influential Puritans purchased it for £2,150.[1]

In the fall of 1633 Captain Wiggin, who had been busily engaged in England in soliciting funds for the purchase of the patent, returned to New England as manager or governor of the struggling settlement, having been appointed to that position by the new proprietors, who sent over, at the same time, some new settlers and supplies. Soon after his arrival he informed Governor Winthrop that, as one of his men had stabbed another, he desired, should the wounded man die, to have the prisoner tried by the Massachusetts authorities. To this the governor replied, "that if Pascataquack lay within our limits (as it was supposed), they would try him."[2] Some time after this Captain Wiggin again asked to have certain offenders tried at Boston, but the governor and magistrates there, after carefully considering the matter, decided that it was best under the circumstances not to assume jurisdiction.[3] Some time afterwards, however, when some servants, who had stolen a skiff and other things, fled from Massachusetts and took refuge upon the Piscataqua, the Bay government did not

[1] *Provincial Papers*, vol. i, p. 157.

[2] *Ibid.*, vol. i, p. 105. [3] *Ibid.*, vol. i, p. 106.

hesitate to dispatch men to seize them and send them back for trial to Boston, where "they were severely whipped and ordered to pay all charges." [1] In 1636 Governor Winthrop informed the Hilton Point settlers that if they dared to receive those who had been banished from the Bay, his government would resent it and might even go so far as to survey the utmost limits of the Massachusetts patent "and make use of them."

At first, harmony seems to have prevailed within the settlement, but after a time the policy which Wiggin pursued appears to have created considerable opposition. Part of this came from the early planters. As they were of the Episcopal faith, they probably felt that their interests would be jeopardized by the advancement of the Bay's designs. Moreover, there is reason to believe that they feared their property rights might be called into question if the Boston magistrates ever assumed jurisdiction over the lands on the strength of the Massachusetts patent. It is likely, also, that there was some jealousy between them and the new settlers, whose religious views were substantially the same as those prevalent in the colony to the south of them. Opposition also developed as a result of factional troubles and religious dissensions in the settlement. In 1637 [2] Wiggin was deposed from the governorship, being succeeded by the Rev. George Burdet, who held office for about a year, when the people chose as their leader Capt. John Underhill, the soldier of fortune, who had played so conspicuous a rôle in the Pequot war and who had but recently been banished by the General Court for the part which he had taken in the Wheelwright controversy. After some three years had passed many began to distrust his motives, and, under the

[1] *Provincial Papers*, vol. i, p. 107.

[2] *Ibid.*, vol. i, p. 119.

leadership of Thomas Larkham, a Conformist clergyman, they openly rebelled. Thereupon the Rev. Hanserd Knollys, who took the side of the governor, published a bull against Larkham, who in return assaulted him. In expectation of receiving help from the Massachusetts authorities, Capt. Underhill and the Rev. Mr. Knollys now took to arms and "marched out to meet Mr. Larkham, one carrying a Bible on a halberd for an ensign; Mr. Knollys being armed with a pistol. When Larkham saw them thus provided he withdrew his party and went no further, but sent down to Mr. Williams, governor of Strawberry Bank, for assistance, who came up with a company of armed men and beset Mr. Knollys's house, where Capt. Underhill was, kept a guard upon him night and day till they could call a court, and then, Mr. Williams sitting as a judge, they found Underhill and his company guilty of a riot and set great fines on them and ordered him and some others out of the plantation." [1]

In order to enjoy "the more comfortably . . . the benefit of His Majesty's laws" and prevent such mischief and inconveniences as had befallen them for want of a civil government, the inhabitants, in October, 1640, agreed to combine themselves into a body politic, and engaged to submit to His Majesty's laws and such orders, consistent with those laws, as should be passed by a majority of the freemen.[2]

Although Belknap informs us that Capt. Wiggin had the power of granting lands to settlers, and that they took up small lots inasmuch as they intended to build a compact town at Dover Neck, very little is known about the early

[1] *Provincial Papers*, vol. i, p. 122.

[2] *New Hampshire State Papers*, vol. xvii, p. 501; vol. xxv, p. 746.

grants, as the records of the town prior to 1647 have apparently been destroyed.[1]

While the inhabitants were thus engaged in civil and religious strife, emissaries from the Bay appeared upon the Piscataqua "to understand the minds of the people, to reconcile some differences between them and to prepare them."[2] In due time Governor Winthrop was informed that the people were "ripe" for his government. "They groan for government and gospel," it was said, "all over that side of the country." As a matter of fact, the time was "ripe" for the extension of the Massachusetts authority over the entire river. The Laconia Company had long since ceased operations, and Captain Mason's widow, finding that the expenses were far greater than the returns from her husband's estate warranted, had practically abandoned his possessions in New Hampshire, so that the servants, being left to shift for themselves, began to divide up the property among their own number. Moreover, affairs in England were fast approaching a crisis, so that interference from that quarter—the thing most dreaded—was no longer to be feared. Under such favorable auspices, the assent of some of the leading men on the river was secured for the change then contemplated. At this juncture Massachusetts secured from the proprietors of the Hilton patent an absolute conveyance of jurisdiction over the entire grant and a transfer of some of the land, with the proviso that the balance should remain in the possession of the late patentees and owners "as their proper right and as having some interest therein."[3] An agreement being reached with the inhabitants as to the terms of

[1] Belknap, *History of New Hampshire*, vol. i, p. 32.

[2] Winthrop, vol. ii, pp. 34, 38.

[3] *Provincial Papers*, vol. i, pp. 154, 156.

admission, the General Court, on October 9th, 1641,[1] passed an act formally assuming jurisdiction over them, basing its claim of jurisdiction not upon the Hilton patent or upon the voluntary submission of the inhabitants, but upon the Massachusetts charter.

Whereas, The Court said, it appeareth that by the extent of the line (according to our patent) the river of Piscataqua is within the jurisdiction of the Massachusetts, and conference being had (at several times) with the said people and some deputed by the general Court for the settling and establishing of order in the administration of justice there, it is now ordered by the general Court . . . . and with the consent of the inhabitants of the said river as followeth: Imprimis, that from henceforth the said people inhabiting there are and shall be accepted and reputed under the government of the Massachusetts as the rest of the inhabitants within the said jurisdiction are. Also that they shall have the same order and way of administration of justice and way of keeping courts as is established at Ipswich and Salem. Also that they shall be exempted from all public charges other than those that shall arise for, or from among themselves or from any occasion or course that may be taken to procure their own particular good or benefit. Also that they shall enjoy all such lawful liberties of fishing, planting, and felling timber as formerly they have enjoyed in the said river . . . also the inhabitants there are allowed to send two deputies from the whole river to the court at Boston.

By granting such privileges Massachusetts won over to her side many of the planters, and thus, to a great degree, disarmed opposition to her plans. The following year the Court went somewhat further by passing an order that "the present inhabitants of the Piscataqua, who formerly were free there, shall have liberty of freemen in their several

[1] *Provincial Papers*, p. 158.

towns to manage all their town affairs, and shall each town send a deputy to the General Court, though they be not at present church members." [1]

According to the document deeding to Massachusetts jurisdiction over the entire Hilton grant,[2] the latter consisted of two divisions or patents, one of which was called the Hilton Point patent while the other was "set forth by the name of the south part of the river of Piscataqua; beginning at the seaside, or near thereabouts, and coming round the said land by the river into the falls of Squamscott, as more fully appears by the said grant." Respecting the disposition of the land, it was stated that the patentees should have all the land on the south side of the river and "one-third of the land, with all improved land," in the Hilton Point section, the division of which was to be made "by indifferent men equally chosen on both sides, whereby the plantation may be furthered and all occasion of differences avoided." Finally, to protect the patentees in their rights, the General Court promised "to be helpful to the maintenance of the rights of the patentees in both the said patents in all the legal courses in any part of their jurisdiction."

If the land mentioned in this deed was that granted to Edward Hilton in 1630, and that only, it is clear that the construction thus placed upon the words of the patent varied widely from that which, as already mentioned, made the grant one compact stretch of country, contiguous to and including the Point. The question naturally arises, "How could it happen that the words of the patent were susceptible of so varied a construction?" The answer is that different interpretations were given to the words "the river

[1] *Provincial Papers*, vol. i, p. 161.

[2] *Ibid.*, vol. i, p. 156; *New Hampshire State Papers*, vol. xxv, p. 705.

Pascataquack." If the body of water which flows from the Salmon Falls river over Quampegan Falls to the Atlantic Ocean was intended under the name "Pascataquack," then the Hilton grant was one compact mass of land. If, on the other hand, the body of water which flows over Squamscott Falls down what is now known as the Exeter river and through the Great Bay to the sea was intended under the name "Pascataquack," then the Hilton grant consisted of two distinct divisions, one of which embraced most of the country which in 1631 was granted to the Piscataway patentees. Although the body of water first mentioned has always been traditionally accepted as the "Pascataquack" or Piscataqua river, and has always been regarded without question as the boundary between Maine and New Hampshire, there is some evidence to show that the second body of water was also known in very early days as the "Pascataquack" river, and that the Squamscott Falls were then called the falls of the "Pascataquack."[1] Either interpretation, therefore, is admissible, though the first is the more reasonable and the more probable, all things being considered. Some, however, have contended that there were two distinct patents which Hilton received from the New England Council, and that these were the ones referred to in the document conveying jurisdiction over the lands to Massachusetts. While not probable, it is barely possible that such was the case, for, although no trace of a second patent is found in any of the records or transactions of the Council, the latter are admittedly incomplete. However, it must be borne in mind that the word patent, as then used, referred not only to the document defining the grant, but also to the territory therein granted, and that in cases where the territory was divided into separate and distinct

[1] *Provincial Papers*, vol. i, pp. 131, 147.

parts, separated by water, it was customary for people to call each part by a different name. Thus it may have been in this instance. However that may be, it is certain that Massachusetts used the deed of conveyance as a means of extending her authority with some show of right over New Hampshire.

In 1642 the General Court granted to the inhabitants of Northam, as the Hilton Point settlement was now called, the liberty which other towns had, and appointed commissioners to settle their limits.[1] The following year the Court, which was held at Piscataqua, was requested to settle the boundary disputes existing between the inhabitants of Northam and those of Strawberry Bank.[2] In complying with this request the Court failed to consider Strawberry Bank as a town and did not map out the boundary in a manner most convenient and advantageous to the parties concerned. The result was that its report was not approved. In lieu thereof, however, the General Court passed an order to the effect that all the marsh and meadow land lying against the Great Bay [3] should belong to the town of Dover, "together with 400 acres of upland ground adjoining and lying near to the said meadow, the remainder to belong to Strawberry Bank, reserving the due right to every one that hath proprieties in the same." The next year the Court enlarged the grant in the Bloody Point section, so that the town of Dover possessed all the land there from Canney's Creek to Hogstie Cove. In granting out

[1] *New Hampshire State Papers*, vol. xxiv, p. 839; *Provincial Papers*, vol. i, p. 162.

[2] *New Hampshire State Papers*, vol. xxiv, pp. 840, 841. Northam became known about this time as Dover. Strawberry Bank later became Portsmouth.

[3] *Provincial Papers*, vol. i, p. 172; *i. e.*, the land lying on the other side of the Great Bay, opposite Hilton's Point. The name by which it was generally known was Bloody Point.

the land on the shore opposite Hilton's Point the Court seems to have disregarded the rights of the late patentees, as expressed in the deed of conveyance, for there it was expressly stated that all the land in the southern division or patent should belong to the patentees, their heirs and assigns forever. The conflicting interests and difficulties, however, in the way were such that, had Massachusetts attempted to carry out the provisions of that document literally, great opposition would have been encountered not only from the settlers at Bloody Point, but also from those who resided at Strawberry Bank, for the inhabitants would have been left without title to their hard-earned possessions and would have found themselves in danger of being deprived of their property by the late patentees. Moreover, such a course would have made enemies where friends were urgently needed. As the views of the inhabitants on the lower Piscataqua were, in religious and civil matters, very different from those held by the Puritans, and strongly antagonistic to the latter's designs, it was greatly to the advantage of the Massachusetts authorities to cultivate a spirit of friendship and adopt a policy of conciliation. Such, in part, were the motives which guided the Boston magistrates in their dealings with the patentees and the settlers.

Although the former, on several occasions, petitioned to have the land allotted to them in the deed of conveyance divided as there provided, it was not until 1655 that a committee was appointed to take any action in the matter.[1] The orders of the Court, then, were to make a just division of the Squamscott patent only, the partition of the land on the Hilton Point side of the stream being deferred "until another time." The following year the committee presented

[1] *New Hampshire State Papers*, vol. xxiv, pp. 854 to 860.

to the legislature for approval its report, which virtually amounted to a compromise of the conflicting claims and interests. As set forth in the report, the Squamscott patent extended in length from Boiling Rock, a point situated a few miles from the mouth of the Piscataqua river, to the Squamscott Falls on Exeter river, and varied in breadth, according to circumstances, from three miles at the falls to a mile and a half at the easterly side of Great Bay and at Boiling Rock.[1] The reason assigned by the committee for confining the breadth of the patent, from the bottom of Great Bay across country to Boiling Rock, to a strip only half as wide as it ought to have been, was that they found, "by credible information, the land so narrow to the seaward that we can allow no more according to the intent of the patent, as we understand it."[2] As a matter of fact, however, it was done with the view of excluding the settlements on the lower Piscataqua and the lands which had been granted to Dover at Bloody Point. The latter the committee now confirmed to that town. In partitioning the rest of the land among the late patentees and their successors, the committee divided it into three parts or divisions, inasmuch as the present owners, they said, were of "three sorts or ranks." As the property had been originally divided into twenty-five shares of £100 each, each division represented, according to the committee, eight shares and a quarter. The first division, embracing the land from Boiling Rock across country to and around the shores of Great Bay to a point some forty poles beyond Sandy Point, they gave to Nathaniel Gardner, Thomas Lake and their associates. The second division, comprising a tract three miles square, beginning at the southern

[1] *Provincial Papers*, vol. i, p. 221.

[2] *New Hampshire State Papers*, vol. xxv, p. 708.

boundary of the first division and running up the river three miles, they assigned to Captain Wiggin and his associates; while the third division, including all the land south of Wiggin's grant up to the Exeter line, they granted to some men of Shrewsbury. Later, the first division, which was within the bounds designated in the Piscataway grant, came into the possession of a few men of Portsmouth. In 1656, the same year that the Squamscott patent was divided, Wiggin and one of his associates gave to Dover a quit-claim of all the land, except sixteen acres, which they claimed within its limits.[1]

At the time when the settlements on the Piscataqua were incorporated with Massachusetts there were two other settlements within the present limits of New Hampshire. One of these was at Exeter, the other at Hampton; the former founded by an exile from the Bay, the latter started under the auspices of the Massachusetts government itself. In the religious controversy which had been going on in the latter colony, the Rev. John Wheelwright, the founder of Exeter, had been one of the principal actors. Being at last summoned to court for having preached on a day set aside for fasting a sermon inveighing "against all that walked in a covenant of works," he attempted to justify his sermon, whereupon he was adjudged "guilty of sedition, and also of contempt" of the civil authorities, the reason assigned by Winthrop for the Court's action being that he had purposely set himself to kindle and increase the differences then prevailing after the Court had specially appointed the fast as a means of composing them.[2] This action, however, did not silence Wheelwright and his followers, for they persisted in their opinions, and some of

[1] *Provincial Papers*, vol. i, p. 223.

[2] *Ibid.*, vol. i, p. 129.

them even presented a petition in his behalf. "Finding upon consultation that two so opposite parties could not continue in the same body without apparent hazard of ruin to the whole," the next General Court decided to send away some of the leaders. For his previous offenses, and for again "justifying himself and his former practice, being to the disturbance of the civil peace," Wheelwright was both disfranchised and banished. A few of his principal adherents were given a similar sentence, while many others, who refused to acknowledge their fault, were disarmed.

Crossing the Merrimac, Wheelwright and some of his followers advanced to the falls of a stream, now known as the Exeter river. At this point they established a settlement, which they called Exeter, obtaining from the Indians deeds for a large tract of territory in that section. A church was soon gathered, and early in 1639 Wheelwright and others received a formal dismission from their old church in Boston.[1] Feeling the need of some sort of civil government, the inhabitants, in July, 1639, entered into a written agreement to establish such a form of government as would best answer the purposes they had in view. As the professions of their allegiance to the king were regarded as altogether too profuse by some of the people, some dissatisfaction arose, as a result of which a new agreement, or combination, as it was called, was drawn up, in which they went no further in their professions of loyalty than simply to acknowledge the king as their sovereign and themselves as his subjects. Strange as it may seem, the change was not conducive to harmony, for there was a reaction in public sentiment, many claiming that the language now did not express a sufficient sense of their loyalty. Accordingly, in the spring of 1640 they revoked the second

[1] *Provincial Papers*, vol. i, pp. 131, 134.

combination and ratified and confirmed in substance the original one. According to the scheme of government adopted, the executive and judicial functions of the government were vested in a board of three magistrates or elders, chosen by the whole body of the freemen, who, in addition to acting as electors, served also in the capacity of legislators, passing such laws and regulations as were deemed necessary, subject, however, to the approval of the president of the board of magistrates.[1] In this way the settlement continued to be governed until the place was incorporated with Massachusetts, when the government was changed to conform with the usages of that colony.[2]

In 1643 some of the inhabitants petitioned the General Court of Massachusetts to be received within the jurisdiction of that government. As it was not an unconditional surrender to the Bay, the answer returned was that, as Exeter fell within the Massachusetts patent, "the Court took it ill they should capitulate with them."[3] A little later, a more humble and acceptable petition was presented to the Court, which then voted to receive them, the terms of annexation being, in the main, the same as those granted to the Piscataqua settlements.[4] The right, however, to send a deputy to the General Court was not conceded.[5] Rather than put themselves again under the protection of Massachusetts, Wheelwright and some of his followers withdrew from the town and took refuge for a time in Maine. Soon after their departure, religious dissensions broke out among the remainder[6] which were not finally

[1] Bell, *History of Exeter*, p. 18.
[2] *Ibid.*, p. 47.
[3] *Provincial Papers*, vol. i, p. 168.
[4] *Ibid.*, vol. i, p. 171.
[5] Bell, *History of Exeter*, p. 44.
[6] *Provincial Papers*, vol. i, pp. 173, 175, 177.

composed until the Rev. Samuel Dudley was called in as minister in 1650.[1]

Although the settlers must have received some land prior to December, 1639, it does not appear that there was any general distribution of the same among the inhabitants before that time. Then, in addition to confirming to Edward Hilton, who had withdrawn from Dover some time before, the lands which he had taken up close to the settlement, the town voted to have the meadow lands between the town and Hilton's house and from the Lamprey river to the head of what was known as Little Bay divided into four equal parts, one of which was to be cut up and distributed among those who either had no cattle at all or owned less than four goats while the other three parts were to be divided among those who owned cattle in proportion to the number each possessed. At the same time, provision was also made for the partition of some of the uplands for planting purposes.[2] The year following the incorporation with Massachusetts the town empowered the townsmen, or selectmen as we would now say, to grant out lots of any size not in excess of twenty acres each. As a result numerous applications were received from time to time for allotments and accordingly a great many grants of varying sizes were made by the townsmen.[3] Regulations were also made at different times with the view of insuring to all the inhabitants the equal enjoyment of the common domain. Early in January, 1645, an order was passed to the effect that 1000 acres should be apportioned by lot among the inhabitants according to the amount of taxes they paid.[4] Fur-

[1] Bell, *op. cit.*, p. 49.

[2] Bell, *History of Exeter*, appendix contains complete record of allotments.

[3] *Ibid.*, pp. 47, 54.

[4] *Ibid.*, p. 132.

thermore, provision was made for the division among the settlers of some of the level lands or "flats" near the river. Pursuant to an order passed in March, 1682, any inhabitant might clear swamp land for the purpose of turning it into a meadow, provided the tract did not exceed ten acres and did not encroach upon lands already granted.[1] In 1714 the town resolved "that two miles of the west side of the township should be laid out by men appointed, for a perpetual commonage for the use of the town."[2] Eleven years later, however, this resolution was repealed and replaced by another to the effect that the land in question, together with all the rest of the common land in the township not h'therto appropriated should be divided, agreeably to the report of a committee which had been appointed the previous year not only to find out which of the inhabitants had received grants and which had not but to ascertain the number of acres which was still due to each.[3] According to the committee's return, 249 persons were entitled to land, the number of acres due to each varying from 20 to 300. Finally, in 1730, a committee was appointed to lay out the lots, but almost two years elapsed before it reported a plan for the division by lot of the town's common lands which was approved by the town. As some, however, complained that they had not yet received the ten-acre lots to which they claimed they were entitled under the resolution of March, 1682, and others desired certain inequalities and corrections in former allotments rectified, some changes were made and twenty names were added to those already on the list. With the adoption by the town of the report as thus amended, all the common lands in Exeter were disposed of with the exception of a few small strips along the river.[4]

[1] Bell, *op cit.*, p. 137.
[2] *Ibid.*, p. 140.
[3] *Ibid.*, p. 141.
[4] *Ibid.*, p. 146.

The one settlement within the present limits of New Hampshire which was regarded by Massachusetts from the very beginning as within her jurisdiction was Hampton. In March 1636, the General Court ordered that there should be a settlement at Wennicunnett and that Mr. Dummer and Mr. Spencer should have power "to press men to build a house forthwith in some convenient place" there.[1] The immediate result of this order was the erection of the so-called bound-house, the site of which is almost half a mile north of the present boundary of Massachusetts. In reply to a petition presented by Stephen Bachellor, Christopher Hussey and others, the Court in September, 1638, granted the petitioners "liberty to begin a plantation at Winnacunnet," and, at the same time, appointed a committee to assist in laying out the town and apportioning the land among the settlers.[2] In 1639 the Court voted that the settlement should be a town, fully empowered to choose a constable and other officials, make regulations for its proper management and well-being and send one deputy to the General Court at Boston.[3] In September of that same year the name of the place was officially changed to Hampton. As in the other towns of Massachusetts, the power of disposing of the public lands was vested in the freemen.[4]

When those in control at Exeter found people from the Bay establishing a settlement near them, they requested them to desist on the ground that the land was included within the grant which they had purchased from the Indians. Furthermore, they wrote the authorities at Boston concerning the encroachment and informed them of their intention

[1] *Provincial Papers*, vol. i, p. 146.

[2] *Ibid.*, vol. i, p. 148; *New Hampshire State Papers*, vol. xxiv, pp. 135, 136.

[3] *Provincial Papers*, vol. i, p. 148. [4] *Ibid.*, vol. i, p. 150.

to lot out all their lands into farms unless Massachusetts could show a better title to the premises. After taking the matter under consideration, the General Court replied, "that they looked at this their dealing as against good neighborhood, religion and common honesty, that knowing we claimed Winnicowett as within our patent, or as vacuum domicilium, and had taken possession thereof by building a house above two years since, they should now go and purchase an unknown title and come [to inquire of] our right." [1] Instead of quietly submitting, the authorities at Exeter sent back word of their intention to maintain their rights and interests under the Indian grant. Thereupon, Massachusetts, to strengthen her claim, sent men up the Merrimac on a voyage of discovery. Upon finding that part of it above Penacook was more than half a degree north of the forty-third parallel of latitude, the Court of elections in 1639 returned answer "that, though we [the Court] would not relinquish our interest by priority of possession for any right they could have from the Indians, yet seeing that they had professed not to claim anything which should fall within our patent, we should look no further than that in respect of their claim." [2] By such a construction of the Bay charter, Exeter's claim to the lands at Hampton was rendered worthless, while the inhabitants, many of whom had fled from Massachusetts to avoid being under the latter's authority, again found themselves within her borders.

As to the boundaries of the several towns, these were regularly determined by the General Court of Massachusetts.[3] Almost always the initiative was taken by the in-

[1] *Provincial Papers*, vol. i, p. 147. [2] *Ibid.*, vol. i, p. 148.

[3] *New Hampshire State Papers*, vol. xxiv, pp. 822 to 917; *Provincial Papers*, vol. i, pp. 149, 181, 192, *passim*.

habitants, who would petition the Court in regard to the matter, whereupon the latter would appoint a committee to consider the conflicting claims, if any, and report the location of the boundary as they thought it should be. Usually this report was approved by the Court and the line in question settled upon that basis; but there were cases where the Court disallowed the findings of the committee and either appointed another committee to consider the question anew or decided it itself. Generally, petitions praying for the settlement of boundary lines did not call for the complete delimitation of the boundary about the entire town, but only for the determination of the line where the lands claimed by one town seemingly encroached upon those claimed by another town or by other interests. The result of determining the boundaries of a town in this piece-meal fashion was that some parts of the town often remained for years without an official boundary-line. Then, too, the lines run by one committee on one side of the town did not always meet those run by previous committees on other sides of the town. Sometimes, also, there was an overlapping of lines; at other times the boundary was wrongly or imperfectly marked out or carelessly or ambiguously defined while often bound-trees or other objects determining the position of a particular line were not properly marked or clearly designated. On the whole, the boundary question was a fruitful source of contention for a great many years, and the more populous the settlements became, the more pressing became the need of and demand for an exact and definite determination of the various town lines.

Although the extension of the jurisdiction of Massachusetts over New Hampshire must have been received with great disfavor by the Masons, no attempt was made by Mrs. Mason to reassert her authority over her husband's possessions there until 1651. Then Joseph Mason, a rela-

tive of the deceased proprietor, arrived in New England, armed with a general power of attorney for all of the latter's property in America.[1] Upon finding that the lands at Strawberry Bank, Newichwannock and other places had long since been appropriated by and were now in the possession of strangers, he took some steps looking towards its recovery, but, owing to the opposition he encountered, he met with no success. At length, in May, 1653, he presented a petition to the Massachusetts legislature, praying that the matters about which he then complained might be investigated and some relief granted. And, as evidence of his belief in the justice of his claims, he offered to submit his case to a number of commissioners, half of whom were to be appointed by himself and half by the General Court.[2] But the Court apparently took no action upon it. Realizing the hopelessness of the situation under the existing government, Mason, soon afterwards, posted notices upon the doors of the meeting houses of Dover, Strawberry Bank and other places, protesting against the proceedings of the Massachusetts government in exercising jurisdiction over the territory. Moreover, he publicly forbade all persons to pasture their cattle upon the lands, cut grass or fell timber without license from Mrs. Mason.[3] Except as a protest, however, and, as an assertion of Mason's rights, this amounted to nothing.

Because of its connection with the determination of the northern boundary line of Massachusetts, mention must here be made of the suit which Mason brought against Richard Leader. Having found the latter in possession of the property which formerly belonged to Capt. Mason at Newichwannock, he instituted an action for trespass against

[1] *New Hampshire State Papers*, vol. xvii, p. 502.

[2] *Ibid.*, vol. xvii, p. 504. [3] *Ibid.*, vol. xvii, pp. 517, 518, 535.

him. Some dispute arising whether the land was embraced within the limits of Massachusetts, the matter was referred to the General Court at Boston, which, late in the spring of 1652, declared the northern boundary of Massachusetts to be a due east and west line, drawn through a point three miles north of the northernmost part of the Merrimac river. And, in order that the exact location of this line might be officially determined, it appointed commissioners to find out the most northerly point on the river and "use their utmost skill and ability to make a true observation of the latitude of that place."[1] As determined from the observations supplied by the commissioners, the boundary line was found to be in latitude 43°, 43′, 12″. In accordance, therefore, with this construction of the terms of the patent, all the land south of a straight line drawn from Casco Bay through a point three miles north of the outlet of Lake Winnepesaukee was regarded as Massachusetts territory. Consequently the lands at Newichwannock were within the jurisdiction of the Bay.

While Cromwell was in control of affairs in England the Masons could expect no help or relief from that quarter, for the family had always been noted for its strong attachment to the royal interests and consequently was in no position to ask for any favors from the party in power, whereas Massachusetts was more in sympathy with the government there and was looked upon with favor by both Cromwell and the Parliament.

With the Restoration, however, came a change. Those who felt themselves aggrieved at the action of the Massachusetts authorities now looked to the throne for relief. Numerous complaints were made against the Bay government and several petitions were presented to the king, pray-

[1] *Provincial Papers*, vol. i, pp. 200, 201.

ing that justice might be done the petitioners. Among the latter was the grandson of the late proprietor of New Hampshire, Robert Tufton Mason, who, upon attaining his majority, had taken the surname of Mason as directed in Capt. Mason's will, and, who, since his brother's death, was the sole heir to New Hampshire. In October, 1660,[1] the king referred one of his petitions to the attorney general, Sir Geoffrey Palmer, who, after taking the matter under advisement, reported "that the petitioner Robert Mason . . . hath a good and legal right and title to the lands conveyed by the name of New Hampshire." No further action on the petition seems to have been taken, while the mere opinion of the king's legal adviser did not put the proprietor in possession of his property, nor did it seem to influence the action of the Massachusetts government with regard to it.

Although Charles II had been proclaimed king in May, 1660, and tidings of the event had been received in New England the following July, no action was taken by the Massachusetts authorities with the view of defining the colony's position under the change of government until the close of the year, when further delay was no longer deemed either expedient or safe. Then two addresses were prepared and forwarded, one to the king and one to parliament,[2] and letters were drafted and sent to gentlemen of influence in England, soliciting such help as they might be able to render in the colony's behalf. Furthermore, instructions were dispatched to Mr. Leverett, the colony's agent in London, directing him to deliver the addresses at the earliest opportunity and instructing him how to act under the circumstances.[3]

Touching, in general, the many complaints that had been

[1] *New Hampshire State Papers*, vol. xxix, p. 106.

[2] *Hutchison Papers*, vol. ii, pp. 42, 43. [3] *Ibid.*, vol. ii, p. 47.

made against the colony, the General Court, in their address to the king, said, "our humble request is, that your Majesty will permit nothing to make an impression on your royal heart against us until we have both opportunity and leave to answer for ourselves." [1] And, in the instructions to their agent, they said, with reference to any complaints that might be made concerning the bounds and limits of their patent, "our desire is that we have notice thereof and liberty to answer for ourselves before any determination or conclusion be made against us." And, they continued, "if, in public you [the agent] be called to answer to these or to any other particulars" you are to "give them to understand that we could not empower any agent to act for or answer in our behalf because we could not foresee the particulars wherewith we should be charged." [2] In a general way, this indicated the policy which the colony intended to pursue.

Although the address was well received at Court and a favorable reply from the king was forwarded to the colony in February, 1661,[3] the apprehensions, which existed in the minds of the ruling classes as to the real intentions of the crown and the probable effects of its policy, were by no means allayed. Under the circumstances, the authorities resolved to proceed with the greatest caution. Accordingly it was not until the following August, more than a year after the receipt of the news in Boston, that Charles II was offically proclaimed king in Massachusetts.

As complaints from all quarters continued to be made in England against the colony and petitions were constantly received praying for relief, the king at last issued orders for commissioners to be sent over to answer the accusations

[1] *Hutchison Papers*, vol. ii, p. 43.
[2] *Ibid.*, vol. ii, pp. 47, 48.
[3] *Ibid.*, vol. ii, p. 51.

made against the Bay government. After much deliberation, Simon Bradstreet and the Rev. John Norton were chosen to represent the colony, and, though both were much averse to making the journey they were finally prevailed upon to go. Contrary to expectations, their reception in England was more favorable than had been anticipated and they returned after a short time with a letter from the king to the General Court.

Some parts of the letter proved very acceptable to those in control of affairs while other parts gave cause for alarm, for, although the king, on the one hand, confirmed their charter and declared that they should "freely enjoy all the privileges and liberties granted to them in and by the same," he stipulated, on the other hand, that their laws should be subject to review and consonant to those of England, that the oath of allegiance should be taken by all, that justice should be administered in the king's name, that freedom and liberty of conscience should be granted to adherents of the established church, and that all freeholders of competent estate, not vicious in their conversation and orthodox in religion, though of different persuasions as to church government, should be entitled to vote in all elections civil and military.[1] Inasmuch as compliance with some of these stipulations was regarded by many as prejudicial to and in derogation of their charter rights and privileges, as they understood them, it is not surprising that the royal commands were but partially and very reluctantly obeyed.

In consequence of the many complaints and petitions that continued to be received, it was at last decided by the Crown to take some decisive action with a view of composing the many differences and learning the true state and con-

[1] *Hutchison Papers*, vol. ii, p. 101.

dition of affairs in New England. Accordingly, in the spring of 1664, a commission passed the seals, designating Col. Richard Nicolls, Sir Robert Carr, George Cartwright and Samuel Maverick as commissioners, fully empowered and authorized "to hear and receive, and to examine and determine all complaints and appeals in all causes and matters as well military as criminal and civil" throughout New England. Furthermore, they were commanded to "proceed in all things for the providing for and settling the peace and security of the said country, according to their good and sound discretion and to such instructions as they . . . shall from time to time receive from England."[1]

By the Massachusetts authorities, the appointment of commissioners, with such ample powers, was viewed with alarm and regarded as an invasion of their charter privileges. The policy they decided to pursue was soon indicated by the action which they took. Soon after convening in August, 1664, the General Court resolved to "adhere to their patent, so dearly obtained and so long enjoyed by undoubted right in the sight of God and men."[2] The following month, in order to deter and frighten people from making any complaints to the commissioners, the Court published an order forbidding the filing of such complaints, and a month later they discussed the matter at great length in an address which they forwarded to the king.[3]

In England the address created an impression very unfavorable to Massachusetts, and some of the latter's best friends were amazed at the colony's action. Naturally the

[1] *Provincial Papers*, vol. i, p. 245; Hutchinson, *History of Massachusetts*, vol. i, p. 459, appendix xv.

[2] Hutchinson, *op. cit.*, vol. i, p. 212.

[3] *Ibid.*, vol. i, p. 460, appendix xvi, xvii.

king was also highly displeased and commanded his secretary to signify his displeasure to those in control at Boston. In Plymouth, Rhode Island and Connecticut, the commissioners were fairly well received and succeeded in hearing and determining such cases as were brought before them, but in Massachusetts they were not able to make any headway whatsoever, while their work in New Hampshire and Maine amounted to very little for the same reason. Although the commissioners made no official determination of the boundary controversy, they informed the inhabitants that the Massachusetts line extended no further north than the bound-house.[1]

Finally, in the spring of 1666, the king recalled his commissioners and commanded Massachusetts to send over four or five persons so that he might in person "hear all the allegations, suggestions or pretenses to right or favor that can be made on the behalf of the said colony."[2] After a long, exciting and vigorous debate, however, the Court resolved not to obey the royal commands, on the ground that they had already furnished their views in writing so that the ablest men among them could not declare their course more fully.[3] Fortunately for the colony, England was at this time engaged in a war with the Dutch and slowly recovering from the effects of the great plague of 1665 and the disastrous fire which destroyed a good part of London in the fall of 1666. Decisive action with respect to American affairs was therefore out of the question, and, owing to other foreign and domestic complications following the war with

[1] *Calendar of State Papers, America and West Indies*, 1661–68, §§ 931, 1024; *Provincial Papers*, vol. i, pp. 249, 253, 256, 276, 280, *passim;* Hutchinson, *op. cit.*, vol. ii, pp. 148, 226, 227 and appendix.

[2] Hutchinson, *op. cit.*, vol. ii, p. 467, appendix xix; *Calendar of State Papers, America and West Indies*, 1661–8, §§ 1170, 1174.

[3] Barry, *History of Massachusetts*, vol. i, p. 402.

Holland, no important steps were taken with the view of settling the differences complained of until 1676. During the time that the mother country was thus involved, the colonies enjoyed a period of peace, but in 1675 a war with the Indians broke out which was waged with considerable vigor and was not finally brought to a close until the spring of 1678.

Soon after the appointment of the royal commissioners in 1664, Robert Mason empowered Col. Nicolls, one of the commissioners, to act as his attorney in disposing of the lands he claimed within the limits of New Hampshire, with directions to take such a quit-rent from the occupants of the land as would give them encouragement. At the suggestion of his colleagues, Col. Nicolls made over his power of attorney to Nicholas Shapleigh.[1] Although the latter leased out some of the lands, it does not appear that the leases which he executed were many in number. In 1667 Shapleigh informed Mason that he had been entrusted by Col. Nicolls with the management of his estate and told him that he had made claim in his behalf to all the towns in New Hampshire, some of the inhabitants of which were willing to comply with his demands while others resolved to remain steadfast to the government of Massachusetts, being encouraged by Capt. Richard Waldron, Peter Coffin and others, who had obtained large tracts of land for themselves and were therefore afraid they would be called to account. He then advised Mason to obtain a confirmation of his grant from the king and commission some persons to carry on the government. Otherwise, Massachusetts would continue as heretofore to rule the country with the result that no profit would accrue to

[1] *Calendar of State Papers, America and West Indies*, 1661–8, §§ 1021, 1485, 1651.

the proprietor. He also suggested that the province would be strengthened politically by being joined to Maine.[1]

In the fall of the same year, Joseph Mason, the former agent of the estate in America, informed his kinsman, Robert Mason, the proprietor, that the magistrates of the Bay were prepared to restore to him the right to dispose of the lands in question provided he did not meddle with the government; and if he were willing to empower commissioners for that purpose, Major Robert Pike of Salisbury "would take pains to be one of three to end this rupture." He therefore strongly advised him to embrace so favorable an opportunity and thus have all his lands, even those which were already disposed of in townships, recalled and disposed of for his benefit. This course, he claimed, would be better than that suggested by him (Robert Mason), for the method of settlement on the men of best estates at Piscataqua would undo the proprietor, inasmuch as they would first confirm themselves in their own grants of land, which they had given to one another and which are in the best places near the water-side where 100 acres are worth 1000 of what is left. Furthermore, should he accept the Bay's offer, it would not be necessary to join the province to Maine as Shapleigh had suggested.[2]

Although Mason does not seem to have been favorably impressed with this proposal, Major Pike did not let the matter drop but wrote several letters in regard to it to Joseph Mason. Failing to receive a reply, he resolved in 1672 to address a letter direct to the proprietor himself. He told him of the discourse he had had with his kinsman, with respect to composing the differences between the proprietor and the magistrates of the Bay and informed him of his readiness to use his best endeavors to that end. As

[1] *Calendar of State Papers, America and West Indies*, 1661–8, § 1485.
[2] *Ibid.*, § 1588.

Massachusetts was still very anxious to see an amicable settlement speedily effected, he said he would see to it that the magistrates would add their authority to the proprietor's right, provided New Hampshire was joined to Massachusetts as to government. He then assured him that, if he heeded these offers, persons would be sent, fully empowered to conclude the affair according to his (Mason's) wishes, "which being effected on terms that he (Mason) will find advantageous, will, he hopes, induce him to come to those parts at least to settle his estate, if not to stay there." [1]

In April, 1671, it appears that Mason wrote a letter to his agent, Shapleigh, to the effect that he would not trouble anyone for what was past but would only demand a reasonable quit-rent from each inhabitant in the future for the land each then possessed. From what Francis Champernowne and Henry Jocelyn told the proprietor in 1672, this communication was well received by the principal inhabitants of the colony and rooted out former misapprehensions, so that the inhabitants earnestly awaited his arrival or expected him to send over commissioners to settle the matter. At the same time, they told him not to join his province to Massachusettts, as the magistrates there desire, for "he can gain no advantage but only detriment thereby in case any contest arises between the king and the magistrates, whose government grows more and more in disesteem." [2]

The year before this Mason offered to sell his patent of New Hampshire to the king, provided the latter would grant him the importation, duty free, of 300 tuns of French wine.[3] The offer, however, was not accepted. Some time later, he and Gorges proposed to alienate to the crown their respective rights to the provinces of New Hampshire and

[1] *Calendar of State Papers, America and West Indies*, 1669-74, § 860.
[2] *Ibid.*, § 907. [3] *Ibid.*, § 651.

Maine, in order that a government might be made for the Duke of Monmouth;[1] but the scheme, although favorably considered for a time, was soon laid aside.

In 1675 Mason again petitioned the king to take his case under advisement, whereupon the matter was referred to the attorney general and the solicitor general, who in due time reported that the petitioner's grandfather had, by virtue of grants made in 1622, 1629 and 1635, been instated in fee in sundry tracts of land known as New Hampshire and that the petitioner, being heir-at-law, had a good and legal title to the lands in question.[2]

In order that Massachusetts might have an opportunity to answer in full the complaints which both Mason and Gorges had preferred against her for usurping jurisdiction over the lands they claimed, the colony was commanded by the king in 1676 to send over agents, fully instructed and empowered to answer. Otherwise judgment would be given against it in its absence. Pursuant to the advice of the elders, who were called in consultation, the General Court decided to obey the royal summons and accordingly chose William Stoughton and Peter Bulkley to represent the colony in England.

In February, 1677, the whole Mason and Gorges controversy was referred for determination to the Committee of Trade with directions to call upon the chief justices of the kingdom for assistance.[3] The latter, being called in, the parties concerned in the controversy were summoned before them, and defended their respective claims. After the lapse of several months, the justices embodied their opinions of the case in a report, which was unfavorable to the

[1] *Hutchinson Papers*, pp. 451, 472.

[2] *New Hampshire State Papers*, vol. xxix, p. 108.

[3] *Calendar of State Papers*, 1674–80, § 47.

contentions of the Bay government.[1] As the Massachusetts agents had, at the hearing, disclaimed title to the lands which Mason claimed and the parties in actual possession of the lands were not before them, the judges decided that it would be improper to pass upon the question of title to the soil without hearing the tertenants or their representatives. The proper course to pursue, they thought, was to have the property rights of the various claimants decided by the courts of justice upon the place, "until it shall appear that there is just cause of complaining against the course of justice there for injustice or grievance." As to Mason's claims of a grant of governmental rights from the Council of Plymouth, both they and Mason's own counsel agreed "that no such power or jurisdiction could be transferred or assigned by any color of law." Concerning the rights of government in Maine, which Massachusetts claimed on the ground that the lands there were comprehended within her limits as she had construed them, the justices decided that her claim was not tenable, because the rights of government conveyed by her charter extend no further than the boundary expressed in her patent, which boundary, they said, was to be construed as running parallel to the Merrimac at a uniform distance of three miles north of the river's bank, the words in the charter, describing "the length to comprehend all the lands from the Atlantic Ocean to the South sea of and in all the breadth aforesaid," not warranting, in their opinion, the overreaching those bounds by imaginary lines or bounds, for the reason that such an interpretation would be both unreasonable and against the interests of the grant. "The words 'of and in all the breadth

[1] *New Hampshire State Papers*, vol. xxix, p. 109; *Provincial Papers*, vol. i, p. 335; *Calendar of State Papers, America and West Indies*, 1674-80, §§ 170, 316, 342; Belknap, *History of New Hampshire*, vol. i, appendix xv.

aforesaid,'" they continued, "show that the breadth was not intended [to be] an imaginary line of breadth, laid upon the broadest part but the breadth respecting the continuance of the boundaries by the river as far as the river goes, but when the known boundaries of breadth determines, it must be carried on by imaginary lines to the South sea." As Gorges, on the other hand, had received from the king a royal charter for the government of Maine the justices declared that his right to the government of that province was valid.

Upon its adoption by the Board of Trade, the justices' report was presented to the king, who signified his approval of the same July 20, 1677.

Although defeated in her contentions, the colony still hoped to keep the country north of the Merrimac under her control. Early in the fall her agents preferred a petition to the Lords of Trade to have New Hampshire and Maine continued and settled under her government, "which they have so long experienced and are satisfied with." [1] As no action was taken upon it, they renewed their request the following December and presented petitions from the inhabitants favoring such a step.[2] About the same time the Lord Chancellor also received a letter from the governor, imploring him, in case the king should confirm Gorges' right to Maine, to mediate with his Majesty and council with the view of having the Massachusetts line and patent extended at least to the Piscataqua river.[3] All these efforts, however, proved fruitless as the English government was averse to increasing in any way the power of that colony.

[1] *New Hampshire State Papers*, vol. xvii, p. 523.

[2] *Calendar of State Papers, America and West Indies*, 1674–80, §§ 545, 587; *New Hampshire State Papers*, vol. xvii, pp. 524–527.

[3] *Provincial Papers*, vol. i, p. 349.

In January, 1678, Mason and Gorges offered to surrender to the king all their right and title to government, whenever he was pleased to appoint a general governor for New England. Should he decide, however, not to establish a general government there, they desired him to annex the province of Maine to New Hampshire for governmental purposes and appoint one governor for both.[1]

Not long after this John Usher, a Boston merchant, then in London, succeeded in purchasing from Gorges for the sum of £1200 the entire province of Maine, which he, in turn, assigned to the governor and company of Massachusetts.[2] In March Mason informed the Lords of Trade of the transaction and told them that overtures had also been made to him regarding New Hampshire, but that he had declined "in confidence that his Majesty will do himself and me right by establishing his own authority in New England."[3] Instead of conciliating matters, the news of the purchase greatly offended the king, as he had also been negotiating with Gorges for the same province.

In 1679 the king informed the Massachusetts authorities that he intended to establish a new government for New Hampshire and commanded them to recall and revoke all commissions which had been granted by them for the government of that territory.[4] The way being thus cleared, a royal commission was issued in September, providing for the installation of a new government there. Thus was New Hampshire brought under the immediate control of the king and erected into a royal province.

[1] *New Hampshire State Papers*, vol. xvii, p. 529.

[2] *Ibid.*, vol. xvii, p. 538.

[3] *Ibid.*, vol. xvii, p. 538; *Calendar of State Papers*, 1674–80, § 629.

[4] *New Hampshire State Papers*, vol. xxix, p. 112.

CHAPTER II

The Executive

Although the gentlemen named in the royal commission of September, 1679, were averse to a change of government and at first loath to accept the places to which the king had appointed them,[1] they were at length prevailed upon to assume the duties of office through fear that their refusal might be construed unfavorably in England and result in the appointment of others who would not be in full sympathy with the people. On January 21, 1680, therefore, they formally met and organized the new government. John Cutt was sworn in as president while Richard Martin, William Vaughan, Thomas Daniel, John Gilman, Christopher Hussey and Richard Waldron qualified as councillors.

By the terms of his commission, the president was authorized to select from among the councillors his deputy who was to preside in his absence and succeed to his office upon his death. Furthermore, in conjunction with the council he was to increase the number of councillors by appointing three others from among the principal inhabitants of the province. Accordingly, the following day Richard Waldron was chosen deputy and Elias Stileman, Samuel Dal-

[1] *New Hampshire State Papers*, vol. xix. p. 655; *Provincial Papers*, vol. i, p. 375. Jan., 1679–80. The commission was duly received in Portsmouth Jan. 1, 1680. By its terms the president and council were required, within 20 days after its arrival, to assume the government. This they did on January 21st. The next day the commission was publicly read and proclaimed in the town.

ton and Job Clements were named councillors. For the transaction of business the commission required the president or his deputy and at least five of the councillors to be present and that public affairs might not suffer through want of a due number of councillors, living in the province, it was provided that any vacancy occurring in the council through death should be filled provisionally by the remaining councillors who were to transmit immediately to the home government the name of the new appointee together with the names of two others, that the king might signify his approval of one of them. As the commission provided for a collegiate executive, the executive powers of government were vested in the president and council jointly. Together they constituted a "constant and settled court of record" with jurisdiction over all cases both civil and criminal. The right, to appeal, under certain conditions, to the king in council was however reserved. Moreover, they were entrusted with the management of military affairs and empowered to issue commissions to such persons as they thought were best qualified to train the militia according to such rules and regulations as the council from time to time prescribed. Furthermore, to meet the charges of the government, they were authorized to continue such taxes and impositions as were then levied upon the inhabitants until the general assembly met and provided other means of support. The summoning of such an assembly, however, could not be deferred indefinitely, for the commission required that it should be convened within three months after the new government went into operation. Before becoming effective, all bills, acts or ordinances passed by that body had to be approved by the president and council, but, once they were approved, they remained in force, unless temporary in character, until disallowed by the king. By the terms of the commission all officials were to take the oath of alle-

giance, while in the administration of justice, the king's seal had to be used. In both this commission and the one that followed it, Mason's claim received recognition and special consideration. It was stipulated that if any persons refused to agree to the terms mentioned, the president and council should attempt to reconcile the differences between them and the proprietor. If, however, they found it was impossible to effect a settlement, they were to send such cases to England "fairly and impartially stated," together with their own opinion of the merits of each, that the matter might there be determined according to equity.[1]

Clothed with such powers, the president and council entered upon their duties. As they were all in full sympathy with the people and shared their confidence to a very high degree, the transition from the old to the new system of government was accompanied by no disorder.[2] In their management of affairs also little friction was occasioned. They were favorably inclined to Massachusetts, firmly attached to the Puritan interest and strongly opposed to the recognition of Mason's claim. Many of them had held positions of trust under the Massachusetts government and all had taken a more or less prominent part in town affairs and were held in very high esteem. Within the time set they issued writs for the election of a general assembly, and upon the day therein designated the delegates chosen met in Portsmouth for the transaction of business.[3] As a result of their deliberations, a general body of laws was passed which is usually referred to as the Cutt code. Several addresses were also drawn up and approved. In

[1] *Provincial Laws of New Hampshire*, vol. i, pp. 3–7; *Provincial Papers*, vol. i, pp. 373–382.

[2] *Collections New Hampshire Historical Society*, vol. viii, p. 305 *et seq.*, gives biographical sketches of the president and the councillors.

[3] *New Hampshire State Papers*, vol. xix, p. 658.

these the attitude of the public toward the changes wrought in the government was plainly indicated. The general satisfaction of the people with the old form of government and their desire for a continuance of the same were clearly set forth. Massachusetts was warmly thanked for the protection which she had afforded the New Hampshire settlements in the past and informed that the present separation had been due to circumstances over which they had no control. Though they thanked the king for giving them rulers from among the inhabitants of the province instead of imposing strangers upon them, they expressed themselves as deeply sensible of the disadvantages likely to result from a multiplication of weak governments unfit either for offense or defence. They represented the inhabitants as being quiet under the shadow of the royal protection, "fearing no disturbance unless by some pretended claimants" to the soil, whom they trusted his Majesty's clemency and equity would guard them against. They also intimated what their position was on the question of allowing appeals to be made to the king in council by suggesting "whether the allowance of appeals might not be used by malignant spirits for the obstructing of justice among them."

Considered from the standpoint of the colonists, the administration of the government by the president and council was highly satisfactory. Indeed, the relations existing between the various branches of the government and the people were very harmonious. No radical changes were effected; no new policy was adopted. Everything moved along very smoothly, and when the president died in March, 1681, his deputy, Richard Waldron, quietly succeeded to the office, the duties of which he performed to the general satisfaction of the inhabitants until superseded in the fall of 1682 by Edward Cranfield. In England, however, the matter was viewed in a very different light. There, Mason,

convinced from his own experience in the province that his territorial claims could never be successfully pressed so long as the government remained as it was then constituted, was bending every effort to bring about a change. Moreover, the higher officials in London were highly displeased with the way in which some of the provisions of the commission were being ignored and the intentions of the home government frustrated. And the Board of Trade, to which matters pertaining to the colonies were referred, was particularly severe in its condemnation. Not only did it express itself as dissatisfied with both the style and the matter of the laws that the assembly had enacted but it recommended that they be rejected in their entirety. Furthermore, it declared that the proceedings of the government were so irregular that it would be necessary to send some person over to govern the country in accordance with such commission and instructions as were usually given to royal governors.[1]

As a result of these representations, a change of government was decided upon. Accordingly, early in 1682, Edward Cranfield was appointed executive head of the province and the following May a new commission was issued for the government of the country.[2] In form, this was similar to that usually granted to royal governors. With the exception of the years from 1686 to 1689 when the experiment of consolidating the northern governments under one general governor was tried and the period from 1689 to 1692 when the New Hampshire towns were without any active external authority imposed upon them from England, the form of government under which the people of the province lived up to the time of the Revolution was the

[1] *Provincial Laws of New Hampshire*, vol. i, p. 45.

[2] *Provincial Papers*, vol. i, p. 433; *Calendar of State Papers*, 1681–5, pp. 192, 213. Also §§ 374, 361.

same as that now introduced. This being the case it will be well to consider here the system thus established.

At the head of the system stood the king, but as it was impossible for him to exercise in person immediate control over the inhabitants on account of the remoteness of the province from the mother country, he appointed some one to act as his representative there. The latter, who usually bore the title of governor, was the intermediary between the king and the home government on the one side and the people of the province on the other; the agent through whom communications between both parties regularly passed. As the representative of the king, he was the special guardian of the royal interests. It was his particular business to see that the rights and prerogatives of the Crown were not infringed. Moreover, he was the one to recommend any legislation desired by the home government and the one also to prevent the passage of laws regarded as harmful to either royal or imperial interests. It was his duty, too, to assist the mother country in her military operations in America and to solicit the aid of the assembly in support thereof. He was also the person upon whom the officials in England relied for trustworthy information concerning the many matters of interest pertaining to the province.

The governor, however, was not merely the guardian of the royal interests and the agent of the king. He was, in addition to all that, the head of the province, the centre of the local administration, the chief executive of the colony, clothed with all the rights and powers properly belonging to such an officer.

In considering his office, it must be carefully borne in mind that its character was distinctly vice-regal. As the representative of the king, he was vested (naturally, of course with certain well-defined limitations) with such powers as the king might have exercised had he assumed the

government himself. Before taking action in many things, however, he was obliged to ask the advice, and, in some instances, receive the consent of the council, the members of which were appointed by the king.[1] He was commander-in-chief of the provincial militia and held a commission as vice-admiral of the naval forces. He could command and levy troops and transport the men as occasion required from place to place both by land and sea, in order to resist invasion, withstand pirates or suppress rebellion. When necessary he could even send troops into other colonies. He, too, had full power to deal with all prisoners of war and, in time of invasion, rebellion, or war, he could declare martial law and continue it in operation during the continuance of the disorders. With the advice of the council, he could erect such "forts, platforms, castles, cities, boroughs, towns and fortifications" as were recommended by that body and was empowered also to put them in a proper posture of defence. In fine, by the terms of his commission his powers in military matters were to be as full and ample as those possessed by any captain general.

The governor was the head also of the judicial system. In conjunction with the council, he formed the highest court of appeal in the province. With the latter's advice and consent, he could erect such courts of justice as were deemed necessary for the consideration and dispatch of all criminal and civil cases. Furthermore, he could appoint judges, justices of the peace, sheriffs and all other officers whose services were necessary for the better administration of justice.

As chief magistrate and executive head of the colony, it

[1] For some of the printed commissions issued to governors see *Provincial Papers*, vol. i, p. 438; vol. ii, p. 305; vol. vi, p. 908; vol. vii, p. 124; vol. xviii, p. 7; *Provincial Laws*, vol. i, pp. 51, 502, 613. The governor's entrance upon the government was usually attended with considerable ceremony.

was his business to maintain order and enforce the laws. He was required to take certain oaths before assuming office and empowered to administer oaths to the council and other office-holders. In him, too, was lodged the power of remitting fines and forfeitures, and of pardoning all offenders except those convicted of treason and wilful murder, in which cases he could grant a reprieve until the royal pleasure was known. He could also establish fairs and markets and appoint such ports, harbors and bays for the accomodation of shipping as were necessary, and at such ports he could erect custom houses and ware-houses and appoint such officers as were required in connection therewith. To him also was granted the power of issuing and enforcing ordinances and in his custody was the province seal. He could therefore give charters of incorporation to cities and towns, grant away the unimproved land of the province and issue licenses, writs and proclamations.

Then again in the work of legislation the governor also took a very active part. Without his consent no assembly could ever be called legally into being, and even after it did convene, he had considerable influence over it. He alone determined the length of its sessions and he alone could prorogue it and name the place and fix the time to which it stood prorogued. Moreover, before any bill could become a law it had to receive his signature and, if he disapproved it, there was no way of passing it over his veto. Furthermore, before affixing his signature to any measure he was required to see that it was as conformable to the laws of England as the nature and circumstances of the country permitted. Then, too, he was commanded to transmit to England, within three months after their passage, for the royal approbation or disapproval, all laws properly authenticated by the public seal and was directed to send duplicates of the same by the next conveyance.

Such, in brief, were the powers granted in the royal commission to the executive head of the province. As this instrument contained in reality the grant of power, it was essentially a public document and was regularly published when the governor assumed office. In the royal province it served substantially the same purpose as the charter did in the other colonies. As a new commission was issued every time a governor was appointed, one might expect to find the different commissions varying considerably, one from the other. This, however, is not the case. In fact, from 1692 on, they present great uniformity, only few changes of any importance being made. Apart from that, there was a slight tendency to define more accurately some of the powers therein conferred.

With his commission, the governor also received a set of instructions. Together the two may, in certain respects, be regarded as the constitution of the province and the organic law of the land so long as they remained in force. Unlike the commission, however, the instructions were not intended for publication. Most of them were private and confidential in character but such of them wherein the advice and consent of the council were mentioned to be required, the governor was directed to communicate to that body and likewise any others which he found it convenient for the public service to impart to it.[1] In some cases he was directed to lay before the house of representatives certain instructions, while occasionally, when the house was bent on infringing upon the prerogative, governors found it expedient to show the representatives such of the instructions as bore upon the point at issue. While the commission contained the grant of power, the instructions showed how that power was to be used and were intended to guide the

[1] *Provincial Papers*, vol. vi, p. 123; vol. xviii, p. 532.

executive in the use of it. Often, too, they limited the scope of his powers or defined them more minutely or more clearly. In addition to the regular instructions, which every governor received at the time of his appointment, additional instructions were from time to time issued as the exigencies of the occasion required and such of them as were not of a temporary character were generally incorporated in the regular set issued to the succeeding governor.

Such extensive and ample powers as the governor was invested with by the terms of his commission, he was in practice never able to exercise to their full extent, and, as time passed, some of those, which he did at first exercise without question or interference, suffered serious curtailment at the hands of the assembly. This was due to many causes which need not be mentioned here as they will be discussed at some length later on. At this point, however, it must be said that the curtailment of the governor's powers greatly weakened his position in the system and rendered him more and more dependent upon the assembly, which came to exercise many powers which were originally considered as vested in the governor only. And for this state of affairs nothing was more responsible than the various intercolonial and Indian wars, coupled with the fact that the assembly controlled the purse, for, once the executive temporarily waived or surrendered his rights and powers in consequence of the exigencies and pressure of war, he usually never fully regained them.

Inasmuch as governors held office merely during the king's pleasure and not for any definite period or stated term, it might be inferred that there were frequent changes in office. As a matter of fact, however, just the opposite is true. Thus, during the period of eighty-four years beginning with 1692 and ending with 1776, only eight persons took the oath of office as governor. The average term

of each, therefore, was ten and a half years. If, however, we exclude from the list those who were not removed by the king, namely the two who died in office and the one who was governor in 1776 when the royal type of government was overthrown,[1] the average is much higher, being approximately fourteen years. The commissions granted to Allen and Shute remained in force 7 and 13 years respectively, while Belcher, Dudley and Benning Wentworth were governors of the province for 11, 13, and 25 years respectively.

After a governor had once been sworn in, experience proved that it was a far more difficult matter to have him removed from office than one might naturally expect. In considering this question, the remoteness of the mother country from the province must not be forgotten. Under the most favorable circumstances, about four months elapsed before a reply could be received, from the authorities in England, to any charges or complaints which had been filed against an official. Then several months at least passed before the answer, which that official made in his defense, came into the hands of the home government. Often, the bringing of counter-charges, the lack of properly authenticated documents or affidavits, and the necessity of procuring additional evidence or information caused a further delay of several months. To this must be added the fact that the governmental machinery in England for dealing with such matters moved very slowly and sometimes with great irregularity. Administrative unity was also lacking and procrastination was the order of the day. Then, too, powerful influence could be exerted in behalf of or against an official which might affect the final decision in his case. At times, also, the consideration of important questions of

[1] Bellomont and Burnet; John Wentworth.

state and the pressure of war forced the government to defer action until a more favorable season arrived.

The most serious charges brought against an executive were brought against Cranfield. The latter's reckless and tyrannical conduct having become unbearable, the people, by private subscription, raised sufficient funds to send Nathaniel Weare as their agent to England to obtain a redress of grievances. In the articles of complaint which were presented to the king against the governor, the latter was accused, among other things, of acting in a partial manner and contrary to his instructions in reference to Mason's controversy with the inhabitants, of raising greatly the charges of the various actions in court, of establishing courts of justice and imposing extraordinary fees without the consent of the assembly, of altering the value of the currency contrary to the act of the legislature, of unjustly imprisoning the inhabitants, of exercising with the council the entire legislative power, and of preventing the people from laying their complaints before the king. The matter, being referred to the Board of Trade, that body forwarded it to the governor with orders for him not only to answer it immediately but to allow all persons free access to the records and give them such other assistance as might be necessary in collecting the evidence against him. Upon receiving these orders, Cranfield ordered all actions concerning Mr. Mason's affairs suspended until the king should render a decision respecting the legality of the courts. He also issued orders greatly facilitating the taking of testimony and directed the secretary to give to those who applied copies of any documents they asked for.

When both parties were ready with their answers a hearing was had before the Board of Trade, which in turn reported to the king that Cranfield had not pursued his instructions in reference to Mason's claims but instead had

caused courts to be held and titles to be decided in the province and had allowed exorbitant fees to be charged in connection therewith. Moreover, concerning the value of silver money, the board said that, although the power of fixing the value of money was vested in the king, still the latter's representative ought not to have made any alterations therein without his Majesty's permission. As for the other things mentioned in the complaint, nothing was said. On the 29th of April, 1685, the king, by an order in council, approved the report and directed that Cranfield be notified concerning it, but the latter, who had already asked for and received permission to withdraw to the West Indies ostensibly on a leave of absence, did not wait for any decision but quietly left the province and returned to England by way of Jamaica. As he did not return to New Hampshire but received the collectorship of Barbadoes, no further action was taken.[1]

During the administration of Lieutenant-Governor Usher, the latter's relations with both the assembly and the council were very inharmonious. While he was complaining to the home government that his orders were being disobeyed, that his commission was being treated with disrespect, that the real reason which actuated the assembly in petitioning for annexation to Massachusetts was "sullenness and aversion to royal government rather than their want of ability" to provide for the support of a separate establishment, and that a general governor ought to be sent over both to uphold the rights of the king and to protect the inhabitants who were loyal to crown government, the opposition was striving through its friends in England to secure his removal and obtain the appointment of one more favorable to their views. At last, in 1696, their efforts were crowned

[1] *Provincial Papers*, vol. i, pp. 515, 570, *passim; Calendar of State Papers*, 1681–5, §§ 1129, 1700, 1832, 2040, p. 585.

with success and William Partridge, a loyal friend of the people, was appointed to succeed him. He remained on very pleasant terms with both the council and the assembly. Moreover, Lord Bellomont, when he assumed the government, also seems to have thought well of him; but his opinion quickly changed when he found that the lieutenant-governor was engaged in shipping lumber to Portugal, a business which he believed was detrimental to the interests of the mother country. To account for this, attention must be called to the fact that Bellomont was a firm believer in the mercantile theory of trade and industrial organization and consequently was an ardent supporter of England's commercial policies. He looked upon the forests of the American colonies as a nursery from which England should be supplied with all the pitch, tar, and lumber she needed for the use of the royal navy and the merchant marine. When, therefore, Partridge persisted in his business after the Board of Trade had expressed itself against his being engaged in it and after it had even directed the governor to discourage it as much as he could, his lordship was much incensed and took steps to secure his removal. In one of the letters which he wrote home he said, "I am humbly of the opinion that Mr. Partridge ought to be removed from that station which is too honorable for him and he in no way qualified for it." "I remember," he continued, "that I rebuked Sir Henry Ashurst for procuring Mr. Partridge to be lieutenant governor of New Hampshire, who is a carpenter by trade and a sad weak man, and I told him his genius had a strong bias for carpenter governors, for he it was with Mr. Mather that got Sir Wm. Phipps made governor of New England."[1] The efforts Bellomont made, however, to secure the lieutenant governor's removal were unsuccessful.

[1] *Provincial Papers*, vol. ii, p. 354 *et seq.*

During Belcher's administration, the opposition used the boundary question, the settlement of which was then being agitated in both New Hampshire and in England, as a means of furthering their scheme to secure the governor's removal. As will be more fully explained later, the province labored under certain disadvantages through having the same governor as Massachusetts. Moreover, in the boundary controversy, the governor with the council—the majority of whom he controlled—was accused of favoring Massachusetts and placing obstacles in the way of a settlement. As usual, Massachusetts on her part adopted a policy of procrastination. At last, after many years of effort and then mainly through the dogged persistence and remarkable ingenuity of John Thomlinson, the province agent, and Mr. Paris, the able solicitor, whom he hired to plead their cause, the final decision settling the boundary in New Hampshire's favor was rendered. Having won this point, they then redoubled their efforts to secure a separate governor for the province and at last succeeded in having Benning Wentworth appointed to that position.[1]

From 1747 to 1750, the latter's administration was greatly embarrassed by the peculiar tactics which were adopted by the opposition solely for the purpose of securing his removal from office. The real trouble began when Wentworth in 1747 refused to approve, as speaker of the house, Richard Waldron, his bitter enemy and Belcher's warm friend. Thereupon the house refused to choose another speaker. Moreover, it refused to admit as members of the house certain persons who had been chosen, in response to the governor's writs, from towns which had never before sent representatives to the assembly and it per-

[1] *New Hampshire State Papers*, vol. xviii, pp. 145, 153, 162, 169, *passim*.

sisted in its refusal even after the governor laid before the house a royal instruction, directing it to admit the representatives from such unprivileged places. As neither the governor nor the house would yield on either point, a deadlock ensued which continued for three years when, in pursuance of the provisions of the triennial act, the assembly had to be dissolved. In the meantime Col. Isaac Royal of Massachusetts had been induced to put himself forward as a candidate for the governorship and to advance £1000 to further his interest along that line. The house, also, forwarded for presentation to the king an address which it was believed would be sufficient to secure the governor's recall. The plot, however, failed ignominiously, chiefly because the agent to whom the address was sent declined to present it on the ground that, as the governor had simply acted within his rights and in compliance with his instructions, the address, if presented, instead of doing him any harm would "certainly bring praise and commendation to Mr. Wentworth and very probably a censure on the assembly." [1]

During the latter part of his administration a number of other complaints were made against him. It was charged that he received excessive fees for, and reservations in, the many township charters which he granted, that he inserted the same names in different grants, and that the clause reserving to the crown certain pine trees was too vague. Complaint, too, was made that he neglected to correspond with the authorities in England as his instructions specifically required him to do, and that he assented to acts relating to private property without the saving clause required by his instructions and then failed to send them to England for the royal approval until considerable time had elapsed after their enactment. In performing his duties, as Sur-

[1] *Provincial Papers*, vol. vi, pp. 56, 65, 67, 92.

veyor General of his Majesty's Woods, it was claimed that he neglected the king's interest and appointed as his deputies persons who were incompetent and could be bought off. When, at last, it was learned that the governor's dismission was determined upon, John Wentworth, his nephew, who was then in England, presented a memorial in his favor.[1] Although he was not able to persuade the authorities there to allow his uncle to remain in office much longer, still, through the influence and solicitation of some friends at Court, he was able to prevent his being superseded until he himself received a commission for the place.

From the outset the new governor courted the favor of the people. By his enterprise, shrewdness and tact and by his obliging disposition and polite address, he succeeded in making himself exceedingly popular. In executing his trust, he proved himself an efficient executive, satisfactory to the Crown and acceptable to the people. In 1772, however, Peter Levius, one of the councilors, preferred certain charges against him. The most serious of these concerned the resuming and the regranting of land which had been previously granted. Levius had protested against the action taken by the governor and council in this matter but had been overruled. The result was that he went to England and laid before the Board of Trade a memorial containing the charges against the governor. Besides the matter above mentioned, he charged that "in a certain case the judges were several times changed until a judgment upon a particular point was at length rendered in favor of the governor." He declared, too, that nearly all of the councilors were related to the governor either by blood or by marriage. He claimed also that the governor, in order "the better to keep out of sight the practices of himself and

[1] *New Hampshire State Papers*, vol. xviii, pp. 561 *et seq.*, 568.

his council," had even ventured to ignore his Majesty's instructions about sending copies of the journals of the council to England. Furthermore, he asserted that when he expressed the wish to enter in the journal his reasons for dissenting to a certain vote of the council he was not allowed that privilege.[1] After the governor's answer to the charges had been received and the matter had been farther discussed before the Board, the latter filed a report which was rather unfavorable to the governor. But the case being brought before a committee of the Privy Council, that body, after maturely weighing the evidence, reported that there was "no foundation for any censure" upon the executive. Moreover, his administration of the affairs of the government appeared, the committee said, to have been such as to produce peace and prosperity in the province. Thereupon, the king approved the committee's findings and dismissed the complaint. Upon hearing the news the people seemed highly satisfied, while the house of representatives signified its approval by sending the governor a message of congratulation.[2]

During the period of royal control, two persons received commissions as president, ten as governor and seven as lieutenant governor. Of these less than half were born in America and only five were natives of New Hampshire. The presidents were John Cutt and Joseph Dudley. The latter, unlike the former, was president not only of New Hampshire but also of Massachusetts, Maine and the king's province, the four being joined under one executive for administrative purposes. In both cases, however, the president shared with the council the executive powers of government. Taken in the order in which their commissions were

[1] *New Hampshire State Papers*, vol. xviii, pp. 614, 623 *et seq.*

[2] *Provincial Papers*, vol. vii, p. 337 *et seq.*

issued, the governors were Edmund Andros, Samuel Allen, Lord Bellomont, Joseph Dudley, Samuel Shute, Elias Burgess, William Burnett, Jonathan Belcher, Benning Wentworth and John Wentworth. Of these, the first mentioned was governor not only of New Hampshire but of all the territory embraced within the limits of New England, New York and New Jersey; the third was the executive head of three provinces, namely New Hampshire, Massachusetts and New York, while the second and the last two were governors of New Hampshire only. All the others held the position of governor in both New Hampshire and Massachusetts, the two provinces which were otherwise separate and distinct being linked together simply through the executive. This personal union of the two provinces lasted from 1702 until 1741 when all connection between them was severed, each having thereafter its own governor. Of the ten who received commissions as governor, one, Elias Burgess, did not serve at all, being, it is said, prevailed upon by the Massachusetts' agents to relinquish his appointment for the sum of £1000; two others, Lord Bellomont and William Burnet, died in office, while another, Joseph Dudley, was the same person who many years before had officiated as president of New England, in which capacity he served until the arrival of Governor Andros. Being prominently identified with those then in control of affairs, he suffered arrest and imprisonment when the governor general was deposed by the people of Boston in April, 1689. As governor, however, he proved to be very acceptable not only to the Crown but also to the people, whose representatives in the assembly publicly thanked him on several occasions for the able manner in which he conducted affairs during the war which was officially proclaimed in the province upon his arrival there in 1702 and continued until the peace of Utrecht was concluded in 1713. Still another

governor, Samuel Allen, was pecuniarily interested in the lands of the province, having purchased from the heirs of Mason their claim to the soil of New Hampshire. In fact, that interest controlled the appointment. As a result the old controversy with the inhabitants respecting the ownership of their lands was revived and considerable friction between the executive and the people thereby engendered.

Those who were designated in their commission by the title of lieutenant governor were Edward Cranfield, John Usher, William Partridge, George Vaughan, John Wentworth, David Dunbar and John Temple. Of these, the first, though styled in the commission simply lieutenant governor, was by that instrument vested with and in practice actually exercised the powers usually conferred upon governors. As Mason, soon after the appointment was announced, mortgaged to him the entire province as security for the payment of £150 annually for seven years, Cranfield was directly interested in the steps which were taken to force the people to take deeds of Mason. John Usher, who received his first appointment as lieutenant governor in 1692, was also directly interested in Mason's claim, for he was a son-in-law of Governor Allen and was empowered to execute the latter's commission until his excellency himself came over and assumed the government. Although this in itself would be sufficient to make the people dislike him, there were other reasons which serve to explain his extreme unpopularity. In the first place, he had taken an active part in the Andros government and both at that time and during his term as lieutenant governor he stoutly upheld the rights and prerogatives of the Crown. Then, too, he did not possess those accomplishments or traits of character which were essential to success in public life. Indeed, he was entirely wanting in political tact and diplomacy. Moreover, he had very high notions of the prerogative and

the dignity of his commission and took a particular dislike to those who opposed his measures. Apparently, he never thought of adopting a policy of conciliation toward those who differed with him on any subject. When friends were most needed he usually made enemies. From what he himself says his unpopularity at one time was such that he did not think it safe either to live in the province or even visit it. Finally, in 1696, the party in opposition to him secured the appointment of William Partridge as lieutenant governor. As the latter was well liked by the people and governed in what they considered was their interest, all friction ceased and harmony once more existed between the various departments of the government. In 1703, after Queen Anne's accession to the throne, Usher was re-appointed lieutenant governor,[1] but this time he was commanded not to concern himself officially with matters relating to the disputes between Allen and the inhabitants and was expressly forbidden to intermeddle with the appointment of judges or juries when such cases were to be tried. Notwithstanding this, however, he was as unpopular as ever. In 1715,[2] he was superseded by George Vaughan, a son of Major William Vaughan, who was one of the most persistent opponents of Allen's claim to the soil. He proved to be a very acceptable official until after Governor Shute arrived. Then, as a result of the controversy which arose between the two as to the powers of the lieutenant governor during his superior's absence, he was suspended from office.[3] His successor was John Wentworth, who was a descendant of one of the early settlers of the province and a relative of the last two royal governors of that name, being the father of Governor Benning Wentworth and the grand-

[1] *Provincial Papers*, vol. ii, pp. 406, 407. [2] *Ibid.*, vol. ii, p. 678.
[3] *Ibid.*, vol. ii, pp. 710, 712.

father of Governor John Wentworth. From this time on, the influence which the Wentworth family and their powerful connections were able to exert in the province rapidly increased until at last it became the controlling factor in New Hampshire affairs. Of the lieutenant governors he was the only one to die in office. David Dunbar,[1] who succeeded him, became involved, like Vaughan, in a controversy with the governor concerning the extent of his powers during his superior's absence. After his withdrawal from the province no one else received a commission as lieutenant governor until 1761, when John Temple was appointed to that post. On January 19th, 1762,[2] he took the oaths of office but it does not appear that he ever actually officiated as lieutenant governor. At the time he held the important position of Surveyor General of his Majesty's Customs for the Northern District of America and resided in Boston.

Although the personal union of the two provinces was undoubtedly a distinct advantage when considered from a military standpoint, it was in many respects detrimental to the interests of New Hampshire and gave rise at times to considerable friction and ill-feeling. Thus difficulties arose in consequence of the fact that the governor lived the greater part of his time in the more populous province. In fact, he seldom came to New Hampshire except when the assembly was in session and even then not regularly. It is, therefore, easy to understand why it was that the people sometimes felt that the smaller province was being neglected. Then, too, when the interests of the two provinces clashed or were at variance with each other, the governor's position was a very trying one. If, under such circumstances, he seemed to favor one side, the other would be apt to impute it to some sinister motive, and if it was the interests of

[1] *Provincial Papers*, vol. iv, p. 590. [2] *Ibid.*, vol. vi, pp. 629, 630.

Massachusetts that happened to be favored, the inhabitants of New Hampshire would be very likely to attribute the governor's action to the fear of incurring the enmity of the people of the larger province. For, as the latter were in a position both from their wealth and numbers to pay him a much larger salary than poor and sparsely-settled New Hampshire could, it is evident that, as his salary there depended on annual grants, he had to be very careful not to incur the hostility of the people of that province by signing any bill or doing anything which might be regarded as detrimental or prejudicial to the interests of Massachusetts. On the other hand, when the acts or conduct of one province proved injurious to or threatened the interests of the other, the governor was often the means of having the matters at issue satisfactorily adjusted. Owing to the fact that the governor lived in Boston, serious complications sometimes arose in the relations between the governor and the lieutenant governor concerning the extent of their respective powers. Thus not long after Usher entered upon his second term as lieutenant governor, he desired his superior, Governor Dudley, to remove some of the officers who he claimed were disaffected and disloyal to Crown government; but Dudley, who was anxious to conciliate rather than antagonize the various factions, was not disposed to comply with the request because the officials complained of were persons of prominence and influence. For these reasons he advised Usher to proceed with caution, at the same time reminding him that "where there are so few persons fit for public business we must drive as we can." But Usher was not the man to be guided by such advice, for not long afterwards he attempted to remove Capt. Hinckes from his post as captain of the fort and appointed another to take his place. Upon being informed of this, the governor wrote Usher that he was sorry that there was any misunderstand-

ing between him and Capt. Hinckes, because the latter had long been a member of the council and held the position of chief justice. On account of Allen's affair, therefore, he thought he ought not to be dealt harshly with. To have suspended him from office would, in his judgment, have been the wiser course to pursue. He then told Usher that, as an answer could be obtained from him in Boston within twenty-four hours, he expected the lieutenant governor to allow him in the future to sign all commissions for New Hampshire himself, "lest there be a quarrel between officers of two sorts." Though Usher chafed under the restraint thus imposed and complained that his hands were by such action completely tied during the governor's absence, he resolved to comply with his superior's orders, and, though some officials were not disposed to yield a ready obedience to his commands, he determined to avoid contention and strife. In his letters to the Board of Trade, he declared that his commission was a mere cipher and that the position of lieutenant governor signified nothing, for not only was he forbidden to dismiss or remove officials or even fill vacancies but he claimed he was not consulted by the governor for considerable periods of time respecting New Hampshire affairs. From England, however, no encouraging reply was received. In fact, the authorities there upheld the governor. Thus, in the margin of one of his letters are the words, "He is to submit to and obey his superiors;" while on another letter, in which he suggested that the lieutenant governor had power in the governor's absence to remove officials for just cause and appoint others in their places, there is a note stating that the governor was "not absent when in New England." Being devoid of tact, he usually made enemies where friends were most needed. He was generally at odds with the council, some of whose members refused to attend when he was in the province. The rep-

resentatives also hated him and the people in general distrusted him. From what the governor said he always put everything in a flame whenever he went into the province. When all these things, therefore, are taken into consideration, the course which the governor pursued was undoubtedly the proper one.[1]

A controversy similar to this arose during the administration of Governor Shute. For about a year prior to the latter's arrival in the province, George Vaughan, the lieutenant governor, had been exercising all the powers of the chief executive. Like Partridge he was a native of the province and was well liked by the people, who expressed themselves as satisfied with the way in which he managed the government. Vaughan now claimed that when the governor was not in New Hampshire, the powers of the commander-in-chief devolved upon the lieutenant governor. Shute, on the other hand, maintained that so long as he was present in either of the two provinces, he was to be considered as legally present in both. Consequently, the lieutenant governor had no power to act except in obedience to his superior's orders or upon receipt of special orders from the crown. At first some of the councillors desired to withhold their opinion as to the merits of the question, but not long afterwards the Board went so far as to say that "any directions respecting the dissolution of an assembly or calling one is a matter that ought to be under his excellency's own hand and directed to his honor, the lieutenant governor, when there is one on the spot."[2] Nothing further of any importance occurred until the following May, when Vaughan determined to bring the matter to a head. Then, during a meeting of the council, he declared, in the governor's

[1] *Col. Papers, Record Office, London.*

[2] *Provincial Papers*, vol. ii, pp. 698, 703, 705.

presence, that as the king's lieutenant governor, he would with all vigor and readiness attend his Majesty's service in that capacity to the utmost of his ability. Moreover, he said that when the governor was not in the province the lieutenant governor exercised the full powers of the governor. A little later Vaughan again asserted in council that, if Col. Shute was not within the bounds of the province as expressed in his commission "but forty miles distant, he must be out of the province and consequently absent." "'Tis demanded of you," said he, "whether or no I am vested with power as lieutenant governor and commander-in-chief, his excellency being absent in Boston." To this the Board gave no direct answer, but, with regard to a commission of the peace which Governor Shute left in the province, it expressed the opinion that it was "good and that the gentlemen inserted in said commission ought to be forthwith sworn," as well as any other officers commissioned by the governor. Soon Vaughan began to act upon his own responsibility and in direct violation of his superior's orders. When ordered to appoint a fast, he deliberately refused to obey, and when commanded to prorogue the assembly, he dissolved it, without asking the council's advice in the matter. He also suspended Samuel Penhallow, one of the councillors, presumably because he had incurred his displeasure by the attitude which he had assumed in the controversy. On September 30, 1717, Shute, in the presence of the council, asked Vaughan whether his instructions superseded or were contrary to his own. When the lieutenant governor "could not produce any" to that effect, the council, upon the question being put to them, declared that Penhallow's suspension was illegal. Thereupon, Shute asked the board, if in view of Vaughan's illegal proceedings, "it was not for the honor of the Crown and the safety of the province" to suspend him till the king's pleas-

ure was known.[1] Upon their deciding in the affirmative, Shute pronounced Vaughan suspended and immediately restored Penhallow to the council board. The assembly which the lieutenant governor had dissolved then convened and approved the governor's action.

During Belcher's administration the question again came to the front, for the views of Governor Belcher on that subject were substantially the same as those of Governor Shute while Lieutenant Governor Dunbar maintained practically the same position in the matter that Lieutenant Governor Vaughan did. Although, like the latter, he vigorously protested against such an interpretation of the terms of his commission, it availed him nothing. In this controversy, unlike the previous one, there was an additional element of bitterness. In the first place, the appointment of Dunbar to the position was particularly distasteful to the governor. Moreover, the ill-feeling that existed at the beginning increased as time passed. Furthermore, as the governor was by nature stern and vindictive to his enemies, he treated the lieutenant governor with great harshness. Finding himself stripped of authority—for he was not allowed either to sit or preside in council or command the fort or issue orders—he withdrew for a long time from the province. Upon his return, the governor relaxed his severity somewhat, but continued to complain bitterly about him to the Board of Trade, declaring that he was the instigator of all the disturbances in the province. These complaints, however, failed to secure his removal. Concerning Belcher's treatment of the lieutenant governor, Col. Atkinson, in a letter to the colony's agent in London, said, that Dunbar had been as badly treated both by his superiors and inferiors as perhaps any man ever was. He declared that the

[1] *Provincial Papers*, vol. ii, p. 710.

governor insisted upon enjoying all power and salary, even when at Boston, so that the lieutenant governor was no more than a cipher. Moreover, not one of the government officials ever came near him, while the officers of the militia even met and had the drums beat about the town without his knowledge or consent. The council, too, he affirmed, sat, in response to the summons of the president acting under orders from the governor, in the very house in which the lieutenant governor lived and there transacted the affairs of government without even taking the least notice of his honor. By such proceedings as these the lieutenant governor was, he said, rendered entirely incapable of doing any service either as lieutenant governor or as surveyor general of his Majesty's Woods, which position he also held. Seeing the hopelessness of his position, Dunbar at last set sail for England, hoping to secure for himself the governorship. After his withdrawal from the province, no other lieutenant governor was appointed until 1761. As the latter, however, never took any active part in the government, being simply a titular lieutenant governor, there was no further controversy, during the provincial period, over the relations between the governor and lieutenant governor.

Although governors derived their support from several sources, by far the most important part of their income consisted of the grants which they received from the assembly, for the home government itself never made any provision for their maintenance. In fact, its policy from the beginning was to throw the support of the provincial establishment entirely upon the province. As the assembly, however, could not be prevailed upon to create a permanent fund for the payment of salaries nor be induced to settle for all time any fixed and definite amount upon the executives, it will be necessary to treat each case separately, for

the sums received not only varied considerably but were frequently granted at very irregular intervals. In the case of the last two royal governors, special grants were also made for house-rent.

Before discussing the salary question, however, attention must first be called to the fact that the province was financially weak. This was due to several causes. In the first place, it must be remembered that the province was small in area and for a great many years contained but few settlements. Its position, too, was such that it was exposed on practically every side to the inroads of the enemy. As a good part of the provincial period was a period of war, considerable money had of course to be spent for purposes of defence. Then, too, those campaigns beyond the limits of the province, in which New Hampshire participated, particularly those in which the troops had to be transported great distances and were kept in service for many months at a time, were a heavy drain upon the financial resources of the province. But apart from the actual expenses thus incurred, these wars impoverished the people, caused some to move away to less exposed colonies, frightened many prospective settlers from taking up a residence in the province, prevented the natural extension of the settlements westward and seriously affected not only agricultural but also business and commercial interests. As a result, the province was for a great part of the time really not in a position to grant large salaries. In some cases also an official's own personality counted for much, while at times the policy, which Massachusetts adopted, of granting salaries for short periods undoubtedly influenced the action of the New Hampshire assembly.

Early in 1682 Mason, in order to strengthen his interest with the home government, offered to surrender to the Crown for the support of the government both the fines and

forfeitures to which he was legally entitled in New Hampshire and one-fifth of the quit-rents. The offer being accepted, an order was issued that the money thus obtained should go toward the support of the executive of the province. Some time after this Mason mortgaged to Cranfield, who had been appointed lieutenant governor of New Hampshire, the lands of the entire province for a period of twenty-one years as security for the payment of £150 annually for seven years.[1] No such sum, as these words would seem to suggest, was however received by Cranfield. In the first place, Mason was not in a position to pay the amount agreed upon. Then in October, 1684, Cranfield himself said that up to that time he had not received one penny from the proprietor. Moreover, the fines and forfeitures in so small a province amounted to no great sum, while that due from the quit-rents was according to what the council said, "through the perverse obstinacy of the most part of the inhabitants . . . so inconsiderable" that no benefit or advantage was derived from them.[2]

In the province the first assembly which met under Cranfield, granted him £200. Although the governor assented to the act, it is very doubtful whether he accepted the gift.[3] On account of his unscrupulous conduct in the later administration of the government, any hopes which he might have entertained, of obtaining further grants from the assembly were completely shattered. The council, however, on January 2, 1684, passed an order, giving him £100 a year from the time of his first arrival in the province, besides

[1] *New Hampshire State Papers*, vol. xxix, pp. 126, 647, 648; *Provincial Papers*, vol. i, pp. 453, 465, 502, 514, 517; *Cal. State Papers*, 1681–5, § 1895.

[2] *Provincial Papers*, vol. i, p. 555.

[3] *New Hampshire Historical Collections*, vol. viii, pp. 212, 213.

£40 which he had expended in making, at the council's request, a journey to New York—all of which was to be paid out of a rate levied by virtue of a mere order of the governor and council, without the consent or advice of the general assembly.[1] As this method of raising money for the support of the government was a failure, Cranfield had to rely for his support upon the perquisites attached to his office. It is, indeed, impossible to estimate with any accuracy just what these amounted to, but it is certain that at this time in so small and so sparsely populated a province they could have produced no great sum. As Cranfield, however, was accused of receiving far greater fees than were customary either in the province or in England and resorted to various methods of extortion to get money, it is highly probable that he received far more than he was justly entitled to.

John Usher, who was sworn in as lieutenant governor in 1692, fared even worse than Cranfield, because he was obliged from the beginning to support the dignity of his office out of his own private fortune, for the assembly absolutely refused to grant him a salary and only occasionally was anything allowed him for traveling expenses. When the matter was brought to the attention of the house, that body usually pleaded poverty. Although it must be admitted that the province was then financially weak, the real reason for refusing him a salary is to be found in the fact that he was extremely unpopular. And that this was the cause is the more apparent during his second term as lieutenant governor, when the assembly cheerfully agreed to give the governor an annual allowance during the entire period of his administration but refused to give Usher a grant for even a single year. Frequently he laid his case

[1] *Provincial Papers*, vol. i, p. 555.

before the home government and asked that orders be issued granting him a salary for the services he rendered. Moreover, he even suggested how certain duties might be laid on lumber, which would yield sufficient revenue "to support the government without hardship to the inhabitants." On several occasions he said he had been so badly treated that he did not intend to return to the province until he received orders from England, and he even asked that he be relieved of his commission. Notwithstanding his many appeals, however, no encouraging reply was received from the home government and no relief granted.[1]

Although, after his re-appointment in 1703, Usher was able to produce an instruction [2] calling upon the assembly to grant a permanent salary both to him and the governor, he met with no better success. And, although the governor interceded in his behalf and time and time again recommended that suitable lodgings be provided for him, the assembly could never be persuaded to provide him with such accommodation as a man in his position should have had. In 1704, after several requests of this kind had been made, the council gave orders that two rooms should be suitably fitted up for the lieutenant governor's accommodation until the assembly met and made other provision. At the same time, the expenses which he had incurred in visiting the province on a previous occasion were ordered to be paid. When the assembly convened, however, the house flatly refused to do anything, saying, "this province never yet allowed anything to a lieutenant governor as he well knew during his former residence here and might rationally expect no other upon his return, especially considering that we are now in a far worse capacity than formerly and unable to

[1] *Col. Papers, Record Office, London.*

[2] *Provincial Papers*, vol. iii, p. 251.

support the more necessary charge of defending this her Majesty's province against the French and Indian enemy." [1]

In March, 1705, the council allowed Usher £9 for certain journeys he made on her Majesty's service. The following September, the governor informed the board by letter that he was sorry to find that his former request for a house for Usher had not yet been complied with, for the king's commands could be executed only by his honor or himself. Nothing, however, was done except to refer the matter to the next assembly. During the next few years several small sums were allowed the lieutenant governor for certain tours he made to New Hampshire, but no provision was made for his support or accommodation until August, 1708, when the treasurer was ordered to provide suitable lodgings for him at the fort. In a few days Usher complained that the rooms provided for him were neither fitted nor plastered and were very inconvenient as lodgings. Thereupon, the same were ordered to be fitted up properly but after this was done Usher complained that they were still worse than those of his negro servants.[2]

In June of the following year, Usher again pressed before the council the question of an allowance. In obedience to the governor's commands, said he, "I am come into the province to promote and forward his design . . . It is now about twelve months since I last came into the government with hazard of my life; staid by his excellency's command some time, spent my own money and time [but] had no allowance, am now come again and expect allowance as is in honor due to the queen's commission, knowing considerable had been advanced for others as appears by

[1] *Provincial Papers*, vol. ii, pp. 435, 439, 440; vol. iii, pp. 272, 277, 295.

[2] *Ibid.*, vol. ii, pp. 459, 466, 476, 482, 586, 588, 589, 590, *passim.*

the accounts sent home."[1] A few days afterwards the council allowed him £5 for a journey he made into the province on the queen's special business and ordered that, "for his extreme care, charges and good services it may be laid before the next assembly that a sum of money may be presented to him as a gratuity for the same."[2] In 1710 Usher told the assembly that he had served four years under Allen's commission, but "never had to the value of a drop of water at the charge of the province," being himself several hundred pounds out of pocket, while under Dudley he had served six years but had never received anything "for his care, pains and service." Again, however, his appeal for support failed to produce the result desired. Although, during the balance of his term, he repeatedly urged the assembly to make him an allowance for his services, that body could not be prevailed upon to give him anything, while the most that the council did was to grant him occasionally a small sum to defray the expenses of certain journeys he undertook for the queen's service.[3] Usher's efforts, therefore, to obtain a salary were totally unsuccessful, while the money which he received every now and then for traveling expenses was inconsiderable when compared with the amount which he was actually obliged to spend in the performance of his duty.

From Allen, also, he received nothing. Although the governor promised him £250 a year for executing his commission, he was unable to pay Usher the money because the people had refused to acknowledge his title and would not therefore take leases of him. Later, Allen was about to give him 1000 acres of unenclosed and unoccupied land situated at Little Boar's Head, and in fact the deed was

[1] *Provincial Papers*, vol. ii, p. 595. [2] *Ibid.*, vol. ii, p. 597.
[3] *Ibid.*, vol. ii, pp. 663, 664, 669, 676, *passim*.

drawn up, but on account of Allen's sudden death it was never signed.[1]

When Allen himself came over and entered upon the government in the fall of 1698,[2] the salary question was not discussed, for he had assumed control principally in order to protect his interests, pending the arrival of Lord Bellomont who had already been appointed to succeed him. At last, on July 31, 1699, the earl himself arrived, and was received with great joy by the people. Although he was to remain in the province only a few weeks the assembly quickly made him a present of £500.[3] This is the only money which he received from the province and the only time that he was able to visit it, for in March, 1701, his career was suddenly cut short by death.

Whether William Partridge ever received any allowance for his services as lieutenant governor is by no means clear. Although there is nothing in the records of either the general assembly or the council about any salary or present, it is evident from the records that considerable money passed through his hands, but what some of the items with which he is credited refer to, or what some of the disbursements mentioned really were, is uncertain. In a speech made to the assembly in 1703, Usher declared that there had been paid to Partridge for disbursements £867:2:6, for which there was no account of particulars.[4] And in another speech, delivered in 1715, he said that he found that Partridge in less than a year had been allowed £800 as the charge of his commission.[5] Furthermore in several letters

[1] *Col. Papers, Record Office.*

[2] *Provincial Papers*, vol. ii, pp. 276, 277.

[3] *Ibid.*, vol. ii, pp. 313, 333; vol. iii, p. 86.

[4] *Ibid.*, vol. ii, pp. 241, 267, 269, 574, 575; vol. iii, pp. 90, 91, 139, *passim.*

[5] *Ibid.*, vol. iii, p. 594.

to the Board of Trade, he declared that the use of the word disbursements was simply a "trick" or "contrivance" to avoid saying a gift or present.[1] From the fact that the accounts and records of the province were very loosely kept, it seems likely that Partridge did receive some allowance or presents from the assembly, and this appears still more probable from the fact that he was extremely popular with the people, who would naturally be inclined to reward one of whom they approved.

Since many inconveniences arose in the colonies as a result of the policy which the colonial legislatures adopted, of giving governors and lieutenant governors gifts, presents and temporary salaries, the Crown, in order to prevent them, issued in 1703, an additional instruction, requiring governors to acquaint their respective assemblies with the fact that the queen desired them to "forthwith settle a constant and fixed allowance" on both the governor and lieutenant governor.[2] Moreover, when this allowance (which was not to be temporary, but without limitation of time) was once settled, neither the governor, nor the lieutenant governor, nor the president of the council was, under pain of her Majesty's "highest displeasure" and summary removal from office, to consent to any act or bill granting them a present or gift.

When Governor Dudley, in the fall of 1703, laid this instruction before the house, that body unanimously agreed to pay him "out of the impost or other public taxes" £160 every year he remained governor of the province.[3] The council, too, unanimously consented to the vote regulating the governor's salary, but was opposed to any alteration of

[1] *Board of Trade Papers, New England,* vol. ii, bundle N.

[2] *Provincial Papers,* vol. iii, p. 251. April 20, 1703.

[3] *Ibid.,* vol. iii, pp. 261, 305.

the treasurer's fees as was therein proposed. Later, in April, 1705, another bill settling the same amount upon the governor during his continuance in office passed both houses and was signed by the governor.[1] In a letter to the Board of Trade, Dudley said this sum was as much as the province could afford to pay in time of peace. As the appropriation was not without limit of time but was made for a specific period only, the Crown failed to secure a full compliance with its wishes. In addition to his salary, Dudley received from the assembly soon after his entrance upon the government, a present of £250.[2] In a letter to the Board of Trade, dated February 25, 1704, Usher said that the government had given and spent upon the governor about £776 in three months, which was "a great deal for New Hampshire." This included the present of £250 above mentioned, his salary for the year £160, and, according to Usher, another gift of £200 which he received without the Queen's leave.[3]

In December, 1715, a few months after George Vaughan became lieutenant governor, the representatives gratefully acknowledged the good service which he had rendered the province but declared that, by reason of the poverty and indebtedness of the country, they were not in a position to give him as much as they would like to. They, therefore, prayed him to accept for a period of one year the income arising from the impost and excise. This vote the council concurred, the following May. Later, the council re-

[1] *Provincial Papers*, vol. iii, p. 308. [2] *Ibid.*, vol. iii, pp. 241, 690, 691.

[3] *Ibid.*, vol. ii, pp. 379, 388, 402. In the records are found the following items also: For disbursements for reception of governor and gentlemen with him and for entertainment of men and horses, £77 8*s*. 6*d*. As present to captain of ship he came in, £20. For entertaining governor and other gentlemen three weeks, £58 4*s*. (1702). For entertaining governor and other gentlemen, £10 (1703).

commended that he be granted the £60 which would have been due to Col. Dudley had not Vaughan published his commission, and, after Governor Shute's arrival,[1] the members entreated him to give his honor for his more honorable support some office of profit, as they themselves were unable to grant him a suitable allowance.[2]

Like his predecessor, Shute also received a present upon assuming the government. At first the amount granted was only £200, but a little later £50 was added to it in order to make it equal the sum given to Dudley.[3] Unlike the latter, however, he did not receive a salary grant covering his term of office, but had to content himself with such sums as the assembly from time to time chose to grant him. For his salary, therefore, he was completely dependent upon the will and even the caprice of the assembly, for when he received one sum, he did not know how long it would be before the next would be received nor what the amount of it would be. In May, 1717, the two houses voted to allow him for the ensuing year thirty shillings every day the assembly was in session. This was to defray his expenses.[4] The following October, he was granted £160, and the next May he received £140 more. The following October, the legislature voted to present him with £90, while in September, 1719, it gave him £100. From that time until 1723 when he returned to England to justify himself before the king for the way in which he administered the government in Massachusetts, the assembly always made him a grant of £100 twice a year.[5] Not-

[1] *Provincial Papers*, vol. iii, pp. 620, 646. Vaughan had acted as agent for the province in England.

[2] *Ibid.*, vol. iii, pp. 652, 669.

[3] *Ibid.*, vol. iii, pp. 670, 690, 691.

[4] *Ibid.*, vol. iii, p. 688.

[5] *Ibid.*, vol. iii, pp. 717, 735, 748, 768, 777, 794, 808, 838; vol. iv, pp. 40, 73.

withstanding the fact that his commission remained in force until after the death of George I, the assembly, though urged, could not be prevailed upon to give him any salary when he was not in New England. When at last his mission was ended and he was on the point of returning to America, the government in England changed hands and he found himself superseded.

Lieutenant-Governor Wentworth, who published his commission in December, 1717, served under three successive governors, namely Shute, Burnet and Belcher. In referring to the salary question, Governor Shute in October, 1718 told the assembly that as Massachusetts, in compliance with the king's instructions had granted their lieutenant governor an allowance, he had no doubt that New Hampshire would follow their example.[1] To this the house replied that their regard for the lieutenant governor was such that they would be only too willing to give him a generous present as evidence of it, but the public charges were so great that the province was not in a position financially to grant him more than the excise until the following May. But when May came, the most that they could do was to present him with the excise for one full year from that time. In July, 1721, they gave him £100, and the following year they allowed him a similar amount. After Shute's return to England in 1723,[2] his powers as commander-in-chief devolved on Lieutenant-Governor Wentworth, who usually received every year from the assembly for the services he rendered in that capacity two grants of at least £100 each. During the war with the Indians he occasionally received an additional sum for the extra

[1] *Provincial Papers*, vol. iii, pp. 716, 735. During the sessions of the legislature he was granted at first 5*s*.; later, 10*s*. a day.

[2] *Ibid.*, vol. iii, pp. 740, 744, 761, 819; vol. iv, pp. 73, 74, 76, 104, 124, 144, 186, 204, 217, 223, 238, 251, 293, 456, 546, *passim*.

services which he then rendered. It was during that war also that the salary grants were the highest. After the assembly settled a salary upon Governor Burnet in 1729, the latter voluntarily transferred a third of it to Wentworth, the lieutenant governor.[1] When however, in 1730, the assembly was discussing the question of granting a salary to Governor Belcher, the feeling between Wentworth and his superior was such that the latter would not surrender to him any part of his salary but compelled him, before the salary act was passed, to acknowledge under his own hand that he "quitted all claim to any part of the salary to be settled on his excellency pursuant to the king's instructions and had no expectation nor dependence upon the assembly for any allowance for the future but depended wholly upon his excellency."[2] The result was that Wentworth had to be content merely with the fees and perquisites attaching to his office.

When Burnet became governor,[3] he had positive directions from the Crown to insist upon the establishment of a permanent salary. He was to urge the passage of an act settling upon governors for all time to come a fixed and definite salary. If, however, he found that this could not be done, he was to take care that a salary was settled at least upon himself during his continuance in office. Although some of the representatives were averse to this, enough were at length won over to secure the enactment of a law granting him annually for a period of three years or during his administration £200 sterling or £600 in bills of credit.[4]

[1] *Provincial Papers*, vol. iv, pp. 546, 550.

[2] *Ibid.*, vol. iv, pp. 570, 759. [3] *Ibid.*, vol. iv, p. 17.

[4] *Ibid.*, vol. iv, pp. 17, 535, 539, 546, 555. Burnet died Sept. 7, 1729.

In the case of Governor Belcher, who was sworn in in 1730, the assembly again fixed the amount at £200 sterling, or £600 in bills of credit, but made the grant cover his term of office.[1] As the bills of credit did not long maintain the same ratio to the pound sterling as was indicated in the act regulating the salary, but steadily declined in value, the actual value of Belcher's salary (for he was paid in paper money) steadily decreased. At last, in 1741, he informed the house that he had "been so great and so long a sufferer by the continual sinking of the paper bills" that he was obliged to lay the matter before them. He claimed that he was being paid much less than he should be paid, since, at the time of the settlement, the £600 in bills of credit were supposed to be equal in value to £200 sterling. Upon that basis he computed that he had received £3240 less than was contemplated in the act, besides the interest on his salary for the time when he had been compelled to wait for payment owing to the depleted treasury. He, therefore, asked the assembly to make good the deficiency, but that body refused to do so on the ground that the vote granting the salary only called for the payment of £600 in bills of credit, nothing at all being said as to the fluctuations in value of the paper money.[2]

David Dunbar, who received a commission as lieutenant governor the year after Belcher entered upon the government, was not favored by the assembly with an allowance and did not receive anything from the governor. From the fees which he obtained by issuing such documents as registers, certificates, licenses and passes he probably received £50. As Surveyor General of his Majesty's Woods, a position which he held by commission from the Crown,

[1] *Provincial Papers*, vol. iv, pp. 570, 760.

[2] *Ibid.*, vol. v, pp. 84, 85.

he drew a salary of £200 a year, while the perquisites amounted to nearly £100.

In his first speech to the assembly, Governor Benning Wentworth, who assumed office in December, 1741, told the members that the king had given him explicit directions to recommend to them that provision be made for the honorable support of the government and for the settlement of such a salary upon both himself and his successors as was necessary to properly maintain the dignity of that office, such settlement to be made in sterling or proclamation money to prevent any variation or depreciation therein. As former assemblies had paid obedience to his Majesty's commands on this important subject he had the less reason, he said, to doubt their ready compliance therewith.[1] In reply the house expressed its intention of making suitable provision for his support as soon as a method could be devised for raising the money and it was known just how great an increase in population the province had received by the recent settlement of the boundary controversy in New Hampshire's favor. A little more than a month later, after making him a present of £500 to help defray "the charge he had been at in coming to the government,"[2] the assembly took up for consideration the salary question. At first, it was not inclined to comply with the royal instructions, for it granted him a specified amount for a short time only, namely until the close of the year 1742.[3] This, of course, the governor did not accept. In fact, he declared that he could not accept any salary, no matter how large it might be, otherwise than by an act of settlement. In the past compliance with his Majesty's instructions had, he assured them, been

[1] *Provincial Papers*, vol. v, p. 136.

[2] *Ibid.*, vol. v, pp. 143, 623, 930.

[3] *Ibid.*, vol. v, p. 145.

a means of obtaining for them great favors. If, therefore, from a contrary behavior, the present assembly should forfeit the royal favor, it would be doing the greatest injury to the people it represented and be a means of putting it out of his power ever again to ask for or obtain the least indulgence for the province in the future. "I am very far," said he, "from desiring to enter into a contest with the house of representatives on this or any other subject but this so nearly concerns the honor of the Crown, the prosperity of the province and the peace of the inhabitants that I should stand highly chargeable with a want of duty to my royal master should I give up so tender a point." As the assembly, however, made no "effectual advance" toward settling a revenue for the support of the government, the governor sought at last to bring that body to a sense of its duty by saying, "Gentlemen, be assured on this point (and don't suffer yourselves to be deluded or misguided) that you are contending with the Crown and not with the governor, and that your non-compliance with my request as the king's representative will be esteemed by his Majesty as the highest act of disobedience."[1] In a few days the house passed two votes, each calling for a grant of £250 proclamation money a year. One of the grants, however, was a conditional one in that it stipulated that the money should be granted only in case the king approved an act providing for a loan of £25,000.[2] Thereupon, the governor informed the lower house that the votes fell far short of his expectations and were so full of uncertainties that they ought to be reconsidered. To this the house replied that on account of "the distressing circumstances" of the people it was impossible to grant any further allowance for the present. For this reason it desired him to accept

[1] *Provincial Papers*, vol. v, p. 148. [2] *Ibid.*, vol. v, pp. 149, 152, 153.

what had been appropriated.[1] Perceiving that it would be useless to press the matter further, the governor simply asked that the votes be made clear and unmistakable in meaning and so worded as to cover his entire administration.[2] As finally approved by the two houses, both of the acts, embodying the salary grants provided for the payment of £250 proclamation money a year. By the terms of the first act, however, the £250 therein specified was to come out of the excise and be paid every year during the governor's continuance in office, while by the terms of the second act the £250 therein designated was to come out of the interest arising from the £25,000 loan and was to be paid annually only so long as the act remained in force. As this was by no means a full compliance with the governor's wishes, the house, in order to induce him to sign both measures, voted to present him with £125 in case he did so. This he finally deemed it best to do.[3]

For several years nothing more was heard about his salary. Then, Wentworth found it necessary to complain, for, since he was paid in bills of credit and not in silver, the actual monetary value of his salary became less and less as the paper bills declined in value. At last, though "with great reluctancy" as he put it, he pressed the legislature "to do justice to their own acts," for "nothing," said he, "will make it clearer that it is your duty and interest to see this act duly executed than the words of his Majesty's instructions, requiring the salary to be 'paid in sterling or proclamation money or in bills of credit current in that province in proportion to the value such bills shall pass at in exchange for silver.'"[4] He therefore asked them to make not only ample satisfaction for all the deficiencies of

[1] *Provincial Papers*, vol. v, p. 150.
[2] *Ibid.*, vol. v, p. 151.
[3] *Ibid.*, vol. v, pp. 152, 155, 623.
[4] *Ibid.*, vol. v, p. 846.

the past but suitable provision also for the future. In response to this, the assembly voted to pay him £1000 to make up the deficiency in his salary due to the depreciation of the paper money, but made no provision respecting any future deficiency. In July, 1747, the governor declared that neither in honor to the king nor in justice to himself could he accept the grant which they made in answer to his repeated messages for a just and equitable satisfaction for the arrearages due in his salary for the past five years. He then told them that he had never considered the salary a competent sum, but had consented to accept it merely in order to avoid giving his superiors any trouble and to put an end to a long session. Although the amount remained nominally the same, the conveniences and necessaries of life had, he said, since 1742 doubled and the more expensive things even trebled in price. He also complained of the manner in which he was paid. From these difficulties he hoped they would relieve him. This appeal, however, fell on unwilling ears.[1] Almost a year later he made another pointed speech to the house in which he said that, although he had sent message after message to it respecting his salary, the treatment they had received had caused him to make up his mind not to make "another fruitless attempt at the public expense," but to lay the matter before the king. Finally, in July 1753, as a result of repeated messages, the assembly passed a vote allowing him to draw his salary quarterly. In order, too, that he might receive the true value of his grant, a committee of the two houses was appointed to ascertain, from time to time as his salary became due, the actual depreciation of the bills of credit.[2]

The following January, Wentworth called attention to

[1] *Provincial Papers*, vol. v, pp. 515, 855.

[2] *Ibid.*, vol. v, pp. 217, 905.

the fact that the last period for calling in and sinking the £25,000 loan had passed, so that the part of his salary based upon that as a fund could no longer be drawn. That being so, he requested them to make suitable provision for the payment of this part of his allowance.[1]

In May, 1754, the house voted him £550 new tenor "for his more honorable and ample support" during that year. On another occasion it made him a grant of £250 new tenor, but this he declared he could not accept, as it was by no means the equivalent of £250 proclamation money. He therefore asked that a sufficient grant be made him for the time past and that the intention of the acts settling his salary be complied with. After some discussion the house voted that the part of his salary arising from the £25000 loan did not extend beyond the duration of the act, and that the payment of that sum annually during the continuance of the act was a full discharge of the grant named therein.[2] Notwithstanding this, however, the governor again and again pressed the house to provide a satisfactory fund for this part of his salary, but the only reply he received was that it did not extend beyond the duration of the act.[3] On several occasions also, when grants were made, he found it necessary to refuse them because they were inadequate.[4] On the other hand, it is sometimes impossible to tell whether he accepted certain grants, because he did not always inform the house of his action on certain votes.

In November, 1758, he informed the assembly that, on account of the "constant depreciation of the paper money and the unprovided state of the treasury," the province was

[1] *Provincial Papers*, vol. vi, p. 233. January, 1754.

[2] *Ibid.*, vol. vi, pp. 327, 383.

[3] *Ibid.*, vol. vi, pp. 674, 692, 695, 751, 759, *passim*.

[4] *Ibid.*, vol. vi, pp. 676, 681, 739, 744; vol. v, p. 271, *passim*.

in arrears to him on the excise alone to the amount of four years salary. Upon hearing this, the house passed a vote granting him £3515: 12: 6, the equivalent of three years salary. A little later it gave him £585: 18: 9 new tenor in full for the period from December, 1758 to June, 1759. The following year, they made him a similar grant but the governor, not considering it equal to £250 proclamation money, desired a further allowance. In June, 1761, after again reminding them of his allowance, he was granted £1171: 17: 6 new tenor for the year then ending.[1]

In January, 1762, he again called attention to the instruction relating to the settlement of a permanent and fixed salary and declared that it was with no small concern that, for twenty years past, an extreme backwardness had appeared in preceding assemblies to provide amply for his support, insomuch so that at the present time there was no house or other conveniences provided for his reception. In their reply the representatives begged to be excused from accounting for any backwardness former assemblies had shown in providing amply for his support. As for themselves, however, they would readily grant him as much as the province was able to give at that difficult season. Before, however, anything was done, a dissolution was ordered.[2]

When the next assembly convened, the governor again called attention to the salary question and again urged compliance with the royal instructions on that subject. Since June 12, 1761, he declared that he had received but £125 proclamation money towards his support. Thereupon, both houses voted him £1250 new tenor. This was followed the next year by a similar amount, considered

[1] *Provincial Papers*, vol. vi, pp. 692, 696, 716, 739, 744, 791.

[2] *Ibid.*, vol. vi, pp. 802, 803, 807.

equivalent to £200 sterling, while for the two remaining years that he was at the head of the government he received £250 proclamation money a year.[1]

Besides his salary, Wentworth also received something for house-rent. Such grants, however, were temporary, sometimes covering only a single year, sometimes a number of years. Then, too, the amount granted varied considerably, depending solely on the will of the assembly. In 1747, upon the expiration of a five year grant, the governor suggested that, as the house in which he lived was in need of considerable repairs, a committee should be appointed either to secure some other house for him or have the necessary repairs made to his present residence.

In consequence of a report made by such a committee, the house voted that it would be "for the honor and interest of the province either to build or purchase a province house for the residence of the governor hereafter, provided a way and method can be found for effecting the same without prejudice to the government."[2] In April, 1753, Wentworth informed the assembly that, since that was "the most advantageous season to make provision for a province house," he hoped they would embrace it, that neither the government nor himself might be put to any further inconvenience on that account, as the money heretofore granted for rent and repairs fell far short of what it was intended for and what was absolutely necessary to be expended for his accommodation. Thereupon, the assembly voted him £168:15 new tenor in full for house-rent and repairs from December, 1748 to June, 1753.[3] The following year it allowed him £50 for the same purpose. In February, 1754 he again urged that body to provide a

[1] *Provincial Papers*, vol. vi, pp. 826, 828, 878; vol. vii, pp. 79, 103.
[2] *Ibid.*, vol. v, pp. 157, 159, 575, 614, 623, 879. [3] *Ibid.*, vol. vi, p. 204.

proper house for his accommodation, for want of which he had been at an extra expense for the last twelve years, the grants being far too small. In response to this appeal, a committee of the two houses was appointed to put his residence in "tenantable repair," and soon afterwards another was named to inquire whether it would be better to build or rent a house for him.[1] In a short time the committee reported that the owners wanted £9000 old tenor for the house in which the governor was then living. Thereupon the house voted to give £1750 new tenor for the property, but a little later it agreed to give £2000 provided some method could be devised for raising the money.[2]

Although nothing came of it at this time, the matter was not dropped. In April, 1757, another committee was appointed to buy or build a province house. This body, however, neglected to obey instructions, so that another vote was passed, commanding it "to proceed immediately to execute the power communicated by said vote." But apparently nothing was accomplished, for in 1762 the governor declared that no house or other conveniences had been provided for him. "It is true," said he, "I have had grants from time to time for house-rent, but it is also true that they have been insufficient to procure accommodations even for a private gentleman." This, however, brought no further response except a grant of £100 new tenor for house-rent.[3]

To the end of his administration, notwithstanding his appeals, he had to be content with the grants which he received from time to time from the assembly and which not only varied in amount but were very insufficient for the purposes intended. Sometimes the amount allowed was

[1] *Provincial Papers*, vol. vi, pp. 261, 271.

[2] *Ibid.*, vol. vi, pp. 280, 282. [3] *Ibid.*, vol. vi, p. 716.

£100; again it was £75; again only £50 or even smaller sums.[1]

From all this it is evident that neither the salary nor the house-rent allowed the governor was sufficient to support him either in that style or with that dignity which his excellency thought befitted his station. On the other hand, it is doubtful whether in view of the financial drain upon the resources of the province, occasioned by the necessities of defense and the expensive campaigns of the last two colonial wars, the province was, for the greater part of the time at least, in a position to grant him more than it did. In addition to the salary and the house-rent received from the assembly, and the fees and perquisities attaching to his office, Wentworth also received from the Crown £200 a year for the services he rendered as Surveyor General of his Majesty's Woods.[2] As John Wentworth, his nephew and successor in office, was also honored with a commission as Surveyor General of his Majesty's Woods, he likewise received £200 a year for acting in that capacity.

In his first message to the assembly, the latter, who had assumed office in June, 1767, recommended in accordance with the king's wishes that proper steps be taken to provide "an adequate, honorable and permanent salary for his Majesty's governor in sterling or proclamation money, which from its fixed value would not disappoint their intentions or render them uncertain."[3] After making him a present of £300 to help defray the expense of his voyage from England, the representatives acknowledged "the

[1] *Provincial Papers*, vol. vi, pp. 264, 614, 682, 717, 828, 878; vol. vii, pp. 43, 103, *passim*.

[2] *New Hampshire State Papers*, vol. xviii, p. 566. It is said that Wentworth paid Col. Dunbar, who held that office before him, £2000 for his resignation.

[3] *Ibid.*, vol. vii, pp. 8, 125, 126.

propriety and reasonableness" of granting him a salary in money of a fixed value and declared that the lawful money of the province was then "well ascertained and fixed," as a gold and silver currency had been established. Some weeks afterwards they made him a grant for one year of £700 in lawful money, to be paid out of the fund in the treasury. To this the council made several objections. It reminded them that instead of being permanent, it was for one year only; that the fund from which it was to be paid was uncertain and that it differed widely from the grants made to former governors. The representatives, however, hesitated to make his salary permanent, because it was reported that governors were to be paid by the British government out of the revenue arising from the customs. In case, however, the scheme reported fell through, they were willing to apply the excise to the governor's allowance as in the past or provide in some other way for his salary. Thereupon, the council declared that, although it had said that there was some prospect that the governor's salary would be paid out of the customs, still the order providing for such a salary would be so worded as to prevent the governor from receiving any reward from the assembly. Further, the council said that it was still of the opinion that the allowance should be established by an act of the legislature and not by a mere vote of both houses, and should be granted during the governor's continuance in office and not for a single year only. In reply the representatives said that, as there were fewer members then present than when the vote concerning the salary was passed, they could not, according to their rules, reconsider the matter at that time.[1]

[1] *New Hampshire State Papers*, vol. vii, pp. 130, 133, 145. One of the rules adopted by the house provided, "that no vote that is passed in his house shall be reconsidered by a less number." Vol. vii, p. 63.

A few days later, after the governor had again called their attention to the matter, they voted him an annual salary of £700 during the period of his administration, the money to be paid out of the excise, which was to be farmed out by collectors appointed by the legislature. As objection was made to the appointment of collectors by the legislature because it infringed upon the prerogative the council struck out that clause in the vote, whereupon the house voted not to pass the grant unless that clause was included, and sent a message to the governor to the effect that it could not see its way clear to pass the vote as it stood.[1]

When a new assembly met, in May, 1768, the governor again brought up the subject of a permanent salary, whereupon the house again suggested the same method of providing for it. Now, the governor, after a conference, said that he would give his assent to such a measure, provided the "act for appropriating and collecting the excise . . . should be drawn with such caution as not to appear to infringe on the prerogative." A bill was accordingly prepared along the lines suggested, but when the house put the question, whether or not the governor's salary should be settled on him during his administration, if the excise bill should pass as it was then drafted, it was decided in the negative.[2] Thereupon, the house voted to give the governor a salary of £700 lawful money for one year. From this time on, the grants were always temporary in character, as in most of the other provinces, and whenever the governor received a salary, the amount was fixed at £700 for the year. Although Wentworth complained at times of

[1] *New Hampshire State Papers*, vol. vii, pp. 146, 147.

[2] *Ibid.*, vol. vii, pp. 171, 173, 177, 179. Belknap says the house was equally divided, whereupon the speaker, who had the right to vote in case of a tie, voted against a permanent salary. See Farmer, *Belknap*, vol. i, p. 341.

the inadequacy of his salary, his complaints availed him nothing. Thus on one occasion, namely in the spring of 1770, he said that ever since his entrance upon the government, his salary had fallen far short of his actual family expenses. In order, therefore, that he might live more in conformity with the sum granted, he had that year deemed it best to retire to his estate in the country, being desirous rather of suffering in his own private fortune than to "have an adequate public income from any other source than the voluntary justice and generosity of the people of the province, whose individual manliness of spirit" he knew and honored.[1]

On several occasions the governor also received allowances for special services. Thus, in 1770, he received £60 for the extraordinary services rendered and expenses incurred in attending a special court of admiralty at Boston. This amount he characterized as "a small paring" and the object of his pity. Again, in 1771, he received £100 for "sundry extra services rendered the province," and in January, 1772, he was presented with £500 "in grateful acknowledgment of his eminent services."

In addition to his salary and these occasional grants, Gov. Wentworth also received grants for house-rent. At first this amounted to £67 a year, but during the last years of his administration it was £100.[2] This too appears to have been insufficient for the purposes intended, for the governor complained that the house was often in need of repairs and was not such a residence as befitted the representative of the Crown. Some steps were also taken toward buying or building a province house but, although commissioners were appointed to consider the matter and reports were

[1] *New Hampshire State Papers*, vol. vii, pp. 257, 305.

[2] *Ibid.*, vol. vii, pp. 130, 179, 227, 246, 257, 279, 303.

made as to the site, the building and the cost, no substantial progress had been made prior to 1776, when the Revolution swept away the royal government.[1]

In matters connected with the government of the province, the governor relied upon the council for assistance and support. The members of this body were the governor's sworn advisers. As such, they constituted a council of state. But the council was not merely a council of state. It acted in other capacities also. When the legislature was in session, it formed the upper house. Then, it was a constituent, an indispensable part of the law-enacting body, possessing co-ordinate power with the lower house and the governor. With the latter, it formed the highest court of appeal in the province. Usually, also, the members were justices of the peace and were empowered to decide all cases where the amount involved was less than 40 shillings. As an advisory board, the council corresponded to the Privy Council in England; as a branch of the legislature, it had its counter-part in the House of Lords.

Here it will be considered simply as a council of state. As such, its chief duty was to assist the governor with advice "in the management of the affairs and the concerns of the government." Upon all important questions the governor was expected to consult the councillors. Upon some matters, as has been already noticed, he was compelled, by his instructions, to ask them for advice, and, in some cases, even to receive their consent before taking action. The council, therefore, could, and, in fact, did sometimes exercise a restraining influence upon the executive.

At times, its powers were much greater than usual. This was the case when both the governor and the lieutenant governor were absent and there was no commander-in-chief

[1] *New Hampshire State Papers*, vol. vii, pp. 265, 266, 311.

in the province. On such occasions the council as a whole assumed the government and executed the commission. As this plan was found to have certain disadvantages, a change was made in 1707. An additional instruction was then issued which provided that at such times the senior councillor should take upon himself the administration of the government.[1]

In order, however, that the passage of radical or undesirable measures might be prevented and nothing detrimental to the royal prerogative done, it was provided that, when the president was in control, only such acts should be passed as were absolutely necessary. Later, the instructions forbade him on such occasions to dissolve the assembly or remove or suspend councillors, judges, justices of the peace or other officers without the advice and consent of at least seven councillors.[2]

As an executive board, the council was subject to the call of the governor. When the latter was in the province, he presided over its deliberations but in his absence the lieutenant governor took the chair and, if neither was present, the senior councillor became the presiding officer. When the governor was sworn in, the councillors were the persons authorized to administer the necessary oaths to him and he in turn was the one empowered to administer the same to them.

The council was by no means a large body. Although the power of appointment was vested solely in the Crown and the king could appoint whomever he wished and as many as he pleased, still the council consisted, as a rule, of less than a dozen members. Usually, the appointments

[1] *Provincial Papers*, vol. ii, pp. 59, 140, 311, 374, 580; vol. xviii, pp. 375, 532.

[2] *Ibid.*, vol. ii, pp. 336, 342; *New Hampshire State Papers*, vol. xviii, pp. 375, 532.

were made on the governor's recommendation. It was the duty of the latter to recommend such only as were "principal freeholders," leading citizens of the colony, men of estates and ability and not persons who were "necessitous or much in debt." Furthermore, he was to take care that they were "well affected toward the government." [1]

The councillors were not appointed for any definite term, but served solely during the king's pleasure. They were, therefore, subject to removal from office without cause or without previous notice being given. In the province, the executive alone had the power of suspending a councillor from "sitting, voting, or assisting in council," but in the exercise of this power, he was, to a certain extent, restrained by his instructions. At first, he had simply to assign some good reason for his action, but later he had to obtain also the consent of the council, signified only after a due examination of the facts. Furthermore, he had to send his reasons for suspending the councillor to the Board of Trade, together with the charges, the proofs and the council's answer. If, however, the reasons were such as were "not fit to be communicated to the council," the executive could suspend a member without the council's consent, but the reasons for his action had, as in the other cases, to be transmitted to England.[2] The persons thus suspended were thereby rendered incapable of serving as members of the assembly. Information concerning any vacancy was to be immediately furnished to the home government, in order that other appointments might be made. The governor was also directed to keep the Board of Trade supplied with a list of persons suitable for appointment as councillors, and, as each vacancy occurred, he was re-

[1] *Provincial Papers*, vol. i, p. 425; vol. ii, p. 63.

[2] *Ibid.*, *e. g.*, vol. xviii, pp. 533, 593.

quired to send over the names of a certain number of persons, from whom the Crown might make its choice. Thus, indirectly, the governor had it in his power to fill the council, as vacancies occurred, with men in whom he had the greatest confidence and on whom he could rely to carry out any policy which he might elect to pursue. Sometimes, through the influence of the opposition, men were appointed who were strongly opposed to his policies. Sometimes, to strengthen their hold upon the council, governors gave the members and their friends offices of profit which were within his gift. As a result, offices were accumulated in the hands of their supporters.

For the transaction of business, the commission declared that three councillors were sufficient but the instructions required that no action should be taken except "upon extraordinary emergencies" unless five were present.[1] That business, however, might not suffer for the want of a due number of councillors, it was provided that whenever, for any reason, the number of qualified councillors, residing within the province was less than seven, the governor should make enough provisional appointments to make the total number seven. The individuals thus appointed had the same powers and duties as those who were regularly appointed, and they held office either until formally displaced by the king, or until the council through the appointment of others in England had again seven members. Often the council meetings were very poorly attended, so that at times it was impossible to transact business. This was a frequent cause of complaint. Dudley was so persistent in his complaints that the Board of Trade at last issued an order, strictly commanding the members to attend. Instructions were

[1] *Provincial Papers*, vol. i, p. 435; vol. ii, pp. 58, 63, 582; vol. vi, pp. 909, 913; vol. xviii, pp. 27, 252.

also issued with the view of obviating this difficulty, but they failed to produce the effect desired.[1] This was due to several causes. In the first place, for a great many years, it was difficult, in so sparsely settled a province, to find suitable men who would accept the position. Moreover, councillors received nothing for their services as the governor's advisers. Consequently, whatever they spent came out of their own pockets. Then, too, some, who were willing to accept the position, would not go to the expense of even paying for their warrants. Thus, in May 1708, Dudley declared that three persons who had been approved as councillors refused to do this, saying that the service was hard and no manner of benefit to them. In March, 1750, Governor Wentworth told the Board of Trade that, as it cost those councillors who lived any distance from Portsmouth, twenty shillings every day they attended, besides their time, it was difficult to find persons who would pay the fees necessary to secure their mandamus. Consequently, before recommending any for appointment, he had to have the assurance from them that they would pay the necessary fees. In 1761 Theodore Atkinson, when he heard that John Thomlinson had gone to the trouble of having his mandamus as councillor renewed as was requisite after the death of the king, said, "I am in doubt whether I should have done as much myself had I been with you, as I find much trouble and little profit in that office."[2] Much other testimony from others is to the same effect.

The councillors enjoyed freedom of debate and freedom in all things to be debated in the council. They did not represent any particular section of the province, but were

[1] *Provincial Papers*, vol. xviii, 533; vol. v, p. 593.

[2] *Ibid.*, vol. vi, p. 855; *New Hampshire State Papers*, vol. xviii, pp. 398, 625.

supposed to act for the best interests of all. Though the governor usually recommended and the king generally appointed persons from different parts of the province, this was by no means compulsory. Sometimes it happened that the majority were residents of one town. Naturally this was a thing to be avoided, for not only did it seem to give one section a great advantage over the others, but, by seeming to favor the interests of one section more than another, it engendered strife and bitter feeling. When advice was required immediately and prompt action was necessary, as, for example, during a time of war, it was a distinct advantage to have a number of councillors living near the seat of government, but the trouble arising in New Hampshire over this matter was due chiefly to the fact that Portsmouth, where the governor lived, was a seaport town. It was, therefore, felt that the commercial interests of the country were being favored at the expense of the landed interests. When several old councillors were laid aside and six new councillors, all from Portsmouth, were appointed to the council board in 1716, the lower house complained that it was impossible to pass a bill for raising a revenue by an impost tax because the council, which consisted principally of merchants and traders, refused to agree to such a measure. Consequently, they said that the burden of the government fell wholly upon the farmer and laborer.[1]

Although the king in the instructions to each governor named the persons who were to serve as councillors, he did not appoint each time an entirely new set of men. As a rule, a large number who served under the preceding executive were reappointed. From the fact that the councillors could be removed at pleasure by the king and be suspended from office for just cause by the governor, one might conclude that they did not hold office for any great

[1] *Provincial Papers*, vol. iii, pp. 669, 675, 678.

length of time. As a matter of fact, however, the tenure of office was not so insecure as at first sight appears. The number suspended by the various governors was very small. By far the greater number suffered suspension during the administrations of lieutenant governors Cranfield and Usher. After Benning Wentworth's entrance upon the government only one was suspended.[1] Moreover, the appointments were not as frequent as would be expected. During the entire period of the provincial government, a goodly number remained in the service for a long term of years; many died in office; some emigrated to other provinces; some voluntarily withdrew from the council board; a few that were appointed never took the oaths of office while still others were dropped when new governors were appointed.[2]

As a rule, the councillors were the leading inhabitants of the province. A large proportion of them were men who had held positions of more or less prominence in their respective towns or under the provincial government. Many were quite prominent in the business world, while a considerable number had served in the lower house of the legislature. Most of them, therefore, were thoroughly schooled in the affairs of government and from experience were well able to give the governor excellent advice and render him material assistance. Usually they were men of wealth, ability and influence, men who commanded the confidence of the people and men who were highly esteemed and respected. Being, for the most part, conservative, as well as

[1] *New Hampshire Historical Collections*, vol. viii, pp. 319, 324, 327, 331, 338, 343, 348, 357, 361; *Provincial Papers*, vol. v, p. 611. There were 54 councillors in all appointed. The average age of each at death was 70.

[2] *Ibid.*, vol. i, pp. 371, 443; vol. iv, p. 18; vol. vi, p. 628; vol. vii, pp. 3, 6; vol. v, preface viii; *Laws of New Hampshire*, vol. i, p. 621.

influential, they greatly strengthened, as a body, the position of the executive and lent an air of dignity to that office. The relations, however, which existed between the two, were not always as harmonious as could be desired. During the administrations of Cranfield, of Allen, and of Usher there was always more or less friction and strife. Under Belcher the council was divided into two distinct factions, very hostile to one another, the one zealously favoring the governor, the other working hard against him. Moreover, the question respecting the powers which the lieutenant governor might exercise during his superior's absence was in the main responsible for the strained relations existing between the board and lieutenant governors Vaughan and Dunbar.

During the administrations of the last two Wentworths there was a growing tendency to fill the council with men who were related to the executive either by blood or by marriage. Indeed, in 1772, almost all the councillors were relatives of the governor. They and their connections formed a powerful clique. Peter Levius made this one of the matters of his complaint when he presented his charges against the governor to the king. The Sons of Liberty also realized what power they wielded, for in a letter to those at Boston[1] they said, "We cannot depend on the countenance of many persons of the first rank here [in Portsmouth] for royal commission and family connections influence the principal gentlemen among us, at least to keep silent during these evil times."

For many years after the establishment of the royal government, the business done by the governor and council was considerable in amount and varied in character. Tables of fees were established, offices were created, petitions were

[1] *Provincial Papers*, vol. vii, p. 338; Farmer, *Belknap*, vol. i, p. 340, note.

received and acted upon, troops and scouts were ordered out and paid, and directions given concerning their movements and their maintenance. Men and ships were impressed, officers were commissioned, oaths were administered, proclamations issued, ordinances published, pardons granted, town bounds surveyed and settled and the fortifications and frontier garrisons inspected and put in a proper posture of defence.

The council's advice was also had upon many matters affecting the interests or welfare of the province. Advice was given with respect to calling, proroguing and dissolving assemblies, with regard to adjourning the courts, with reference to making expeditions against and treaties with the Indians, with respect to appointing and removing officials, with regard to approving the measures of the lower house and with respect to a great variety of other matters as they presented themselves.

As time passed, however, the business transacted materially diminished. The council met less often and when it did meet, its sessions were much shorter. Though the powers of both the governor and the council as set forth in the commission remained the same throughout, they were in reality being limited and seriously curtailed, in consequence of the continual encroachments of the assembly and the growing consciousness of its powers, resulting largely from its control of the purse. Throughout the provincial period, the tendency was for the lower house to encroach further and further upon the prerogative, to restrict more and more the governor and council in the exercise of their various powers and privileges, and, where possible, to deprive them of the actual enjoyment of the rights and privileges conferred upon them by his Majesty's commission. But how all this came about will be more carefully considered in the chapters that follow.

CHAPTER III

The Legislature

In the constitutional history of New Hampshire during the colonial period the legislature played a far more important rôle than the executive and its influence was much more extensive and far-reaching. At first, inasmuch as the various settlements were founded by different parties and not by one great trading company or corporation, there was no general legislature or central law-enacting body for the whole. In fact, until Massachusetts extended her jurisdiction over the New Hampshire towns, the latter were separate and distinct. Each was independent of the other and each managed its own affairs. Then, however, they virtually became an organic part of that colony and were, in the main, subject to the same laws. By the terms of the union, the inhabitants along the Piscataqua were allowed two deputies in the General Court at Boston but the following year, the Court passed an order that each town on the river should send one deputy. Furthermore, it voted to suspend the religious requirement, confining the franchise to church members only. In other words, the ecclesiastical restriction which had been so rigidly enforced in Massachusetts was not to apply in New Hampshire.[1] Hampton, which had been settled under the auspices of the Bay government and was always considered by the latter as a Massachusetts town, had received the right to send a deputy to the General Court in 1639, when it was incor-

[1] *Provincial Papers*, vol. i, pp. 158, 159, 161.

porated as a town. Of the four towns within the limits of Mason's grant, Exeter was the only one which was never represented in the General Court of Massachusetts. The others continued to enjoy the privilege of representation in that body until New Hampshire was created a royal province in 1679.[1]

Then, in the royal commission which was issued for the government of the country, provision was made for a separate legislature for the New Hampshire settlements. In that instrument it was provided that a general assembly should be called within three months after the installation of the president and council,[2] and it was stipulated that, in issuing the writs of election, such rules and regulations should be observed, not only as to the persons who were to choose their deputies but also as to the time and place of meeting, as the president and council should judge were most convenient. Furthermore, the king declared it was his intention to continue to convene them in the manner prescribed until by inconvenience arising therefrom he should have cause to alter the same.[3] In obedience, therefore, to the royal commands, writs for the election of assemblymen were issued well within the time set and on the 16th of March, 1680, the delegates chosen met in Portsmouth, ready to transact business.[4] Thus was the first general assembly ever held in New Hampshire called into being.

When, a few years later, the regular type of royal gov-

[1] *Provincial Papers*, vol. i, p. 369. Gives list of deputies sent to the General Court from 1641 to 1679.

[2] *Ibid.*, vol. i, p. 379.

[3] *Ibid.*, vol. i, p. 380.

[4] *Provincial Laws of New Hampshire*, vol. i, pp. 9, 11; *New Hampshire State Papers*, vol. xix, pp. 655 *et seq.*

ernment was introduced, similar provision was made for an assembly, for, in the commission, then published, the executive was given full power and authority, with the advice and consent of the council, to summon as circumstances required general assemblies of the freeholders in such manner and form as might be found "most convenient for our service and the good of our said province until our further pleasure shall be known therein." [1]

In the commissions which were granted to President Dudley and Governor Andros for the government of New England, no mention was made of an assembly or other popular body. During the former's administration, however, the president and council expressed themselves in favor of an assembly by declaring that his Majesty's service, the interests of the government and the prosperity of the province would be advanced by the establishment of a well-regulated assembly to represent the people in making the necessary laws and levies.[2] In both of the commissions which Andros received the legislative powers of government were vested solely in the governor and council [3] but in 1692 the privilege of a local assembly was restored [4] and thereafter always conceded in the royal commissions. It is, therefore, evident that the Crown, which alone had the power to call an assembly into being, authorized, at the very beginning of the period of royal control, the calling of a general legislative body for the province and insured the continuance of such a body in the province by inserting similar clauses in every commission that was issued

[1] *Provincial Papers*, vol. i, p. 436.

[2] *Laws of New Hampshire*, vol. i, p. 112, June 2, 1686.

[3] *Ibid.*, vol. i, pp. 148, 227. His first commission is dated June 3, 1686; his second, April 7, 1688.

[4] *Ibid.*, vol. i, p. 501.

from the time when Samuel Allen was appointed governor in 1692.

In the work of legislation the governor was an important factor. Indeed the executive formed a constituent part of the law enacting body, for all laws, statutes and ordinances had to receive his approval before becoming effective. Although in New Hampshire he was never able to initiate legislation, still he could in various ways influence the work of legislation. Usually he embraced the opportunities which presented themselves, when the assembly was in session, to lay before the two houses such matters as demanded their attention and to impress upon them the desirability or necessity of taking certain action or making certain changes. At such times, too, he was wont to make such suggestions, recommendations and proposals as he deemed necessary or expedient. In many instances these would be acted upon by the legislature and adopted either wholly or in part and several cases might be cited where his advice on certain questions was even sought. Then, again, it was through him, as the representative of the king, that the assembly learned what the wishes and demands of the Crown were in matters respecting legislation and often it depended largely on the influence he exerted over the assembly and upon his tact and skill whether the royal commands would be fully complied with or not. As the royal agent, too, it was his particular business to see that all the laws, statutes and ordinances were agreeable to those in force in England, were conformable to the terms of the commission and instructions and did not encroach upon either his own powers or the prerogative of the Crown. In such matters, he could enforce obedience by simply withholding his approval until the objectionable features were eliminated, for no bill, statute or ordinance could be passed

without his approval and there was no way of over-riding his veto. By exercising the veto power, he could prevent the passage of any laws that he disliked or regarded as prejudicial to colonial or royal interests. In this way he could, in theory, keep all legislation well within constitutional limits and agreeable to the prerogative; but very often, as will be clearly seen later, practical considerations, involving colonial or royal interests or both, prevented him from exercising the veto power.

As in other colonies, the general assembly in New Hampshire soon assumed the bicameral form. Like its model, the parliament of Great Britain, it consisted of two houses, an upper house called the council and a lower one styled the house of representatives. The first corresponded roughly to the House of Lords while the second had its counter-part in the House of Commons. The former was composed of men, chosen by the king, usually on the governor's recommendation and held office during the royal pleasure; the latter consisted of delegates, elected by the freeholders of the several towns. The upper chamber represented the conservative element in the colony, the lower, the democratic or popular element. The council was regarded as the bulwark of the royal or imperial interests, the house of representatives as the stronghold of local or colonial interests. Each, therefore, was a check upon the other.

The council was the same body that acted as the Council of State. Most of the time it was the governor's advisory board, but during the sessions of the general assembly it was also a constituent part of the legislature, inasmuch as every law or ordinance had to pass the council before being sent to the governor for approval.[1] As an upper

[1] *Provincial Papers*, vol. i, pp. 380, 434; vol. ii, pp. 58, 306, 368.

house it did not possess that independence which characterized the House of Lords and was never able to command that respect from the people or exert the influence which the lower house did, for it was apt to be, and in reality at times was, strongly influenced by the executive, who was not only instrumental, as a rule, in securing the appointment of the members, but possessed the power to suspend them for such reasons as he alone thought just and sufficient. The qualifications for councillor, which the home government regarded as best suited to the requirements of the position, were if faithfully observed such as would insure the appointment, by the Crown, of loyal, conservative men of good character and business capacity. The governor was particularly commanded to recommend for appointment such only as resided in the province, led upright lives, were well-disposed toward the government and were of good estates and not necessitous or much in debt. Upon men of that type, the king thought he could rely in furthering his measures and supporting his policy. As time proved, the council was conservative in spirit and formed a bulwark against the ever-increasing aggressions of the lower house, while among its members were some of the best, most progressive and ablest men of the period.

When organized as the upper branch of the legislature, it had the same officers as it had when sitting as a Council of State. Although the presiding officer made suggestions and proposed matters for the consideration of the house he did not vote on the questions at issue, except in the case of a tie, nor did he interfere in their deliberations, for both freedom of speech and freedom of debate were guaranteed the members by royal instruction.[1] A record of the proceed-

[1] *Provincial Papers*, vol. ii, p. 63.

ings was kept by the clerk, who also had charge of the office files, the correspondence and all the papers that came before the Board. As to compensation, the councillors received nothing for their services when sitting as a council of state, but were rewarded when officiating as members of the legislature, receiving, like the representatives, a *per diem* allowance while they were engaged on legislative business during the session of the general assembly. As the amount was not named in the commission and instructions, it had to be determined by a vote of all the branches of the legislature, and, as each assembly had the right to name the amount to be paid, it could be changed. Generally, however, the councillors received two shillings more a day than the members of the lower house. Later, when the settlements extended further into the interior, a small mileage allowance was always granted the members of the assembly and something was also allowed for the time consumed in coming to and returning from Portsmouth. They were also carried free over the ferries in their passage to and from the seat of government. Moreover, by the law of 1718, no member or his servant could be arrested, sued, imprisoned, or in any way molested or compelled to answer to any suit, bill or complaint, cases of high treason and felony excepted, during the session or while on their way to or from the place where the session was held.[1] According to an instruction issued later, "no protection from arrest was to be allowed a member further than in his person and that only during the session of the assembly."[2]

The lower house represented the democratic element in

[1] *Laws of New Hampshire, Edition of 1771*, p. 61; *New Hampshire State Papers*, vol. xxix, p. 668; *Provincial Papers*, vol. iv, pp. 445, 533.

[2] *New Hampshire State Papers*, vol. xviii, p. 533.

the government. It constituted the elective branch of the general assembly and was therefore more responsive to the public will. By the terms of the royal commission, its members were always to be freeholders, because that was "most agreeable to the custom of England."[1] But what special qualifications those freeholders should possess in order to exercise the franchise, the authorities in the colony alone determined.

When the summons for the first assembly was issued, the president and council designated by name the particular persons in each of the four towns who were entitled to vote for the deputies.[2] At the same time, however, they declared that they did not intend that this should be considered as a precedent or that it should extend further than the calling of this first assembly which, when convened, could, they said, make "such laws and constitutions in this and other respects as may best conduce to the weal of the whole." During this administration a law was passed providing that the deputies should be elected annually and that the assembly should be convened every year on the first Tuesday in March. The right to vote was restricted to freeholders who had taken the oath of allegiance and were at least twenty-four years old and worth £20 in rateable estate. Moreover, they were to be Englishmen and protestants, "not vicious in life but honest and of good conversation." During Cranfield's term of office the franchise was restricted to freeholders who were settled inhabitants in any town and who were at least twenty-one years

[1] *Provincial Papers*, vol. i, p. 436; vol. ii, pp. 58, 64, 306, 368.

[2] *Provincial Laws of New Hampshire*, vol. i, p. 11. 209 in all were named. Of these 71 lived in Portsmouth, 61 in Dover, 57 in Hampton and 20 in Exeter. At this time the population of the province was said to be 4000.

of age and possessed a rateable estate of £15.[1] By a law passed in 1699, the franchise was given to such freeholders only as possessed an income from real estate of 40 shillings a year or held personal property to the value of £50 sterling.[2] The same qualifications were also required of the candidates for the assembly. From 1728 on, electors were required to own real estate to the value of £50 within the town, parish or precinct where the election was to be held. Furthermore, it was stipulated that those possessing the required amount of real estate in the district could vote there, even if they did not live there. The power to decide whether a person was properly qualified or not was vested in the moderator of the meeting and the selectmen of the district, but if they could not agree the matter was to be determined by the house of representatives. Candidates for the office of assemblymen were from this time on required to own real estate to the value of £300.

Now a word as to the manner of calling an assembly. Whenever it was necessary to summon an assembly, the governor issued a warrant to the sheriff, directing him to make out precepts to the selectmen of the various towns, designated by him, requiring them to hold meetings of the freeholders for the purpose of electing persons to represent them in the general assembly. After the election was over, the various precepts were returned to the sheriff with the names of the representatives elect written upon them. Then, when the assembly met, they were laid before the house, which proceeded to examine them. If any were found to be defective, an order was passed that it should be corrected and returned in proper form.

The oaths, mentioned in the commission and prescribed

[1] *Provincial Laws of New Hampshire*, vol. i, pp. 25, 63.

[2] *Provincial Papers*, vol. iii, p. 217.

by Parliament were then administered to all the members returned under the sheriff's precepts, generally by some of the councillors specially empowered by the executive for that particular purpose. By the English authorities this was regarded as important. In fact compliance was essential, for, according to the commission, a refusal to comply rendered "one incapable of sitting though elected," thus working a forfeiture of the member's seat.[1]

After the oaths had been administered, it was customary for the executive to order the representatives to choose a speaker and to settle their house.[2] This the representatives at once proceeded to do, and, after choosing one of their own members as the presiding officer of their house, they informed the governor of their action. Usually the latter then called them up to the council board where, after signifying his approval of their choice, he delivered his speech which generally contained such news and announcements as he had received from the home government, together with such suggestions and matters of interest relative to the province as he thought fit to commend to their attention. This delivered, the house withdrew again to its own chamber, properly qualified to enter upon the consideration of such business as might regularly come before it.

The governor's approval of the speaker became so regular that people came to regard it as a matter of form only. Consequently, when Lieutenant-Governor John Wentworth, in April, 1728, signified his disapproval of the choice made by the house, the latter was greatly surprised and, as it was something new and entirely unheard of in New Hampshire,

[1] *Provincial Papers*, vol. ii, pp. 58, 306.

[2] *Ibid.*, vol. iii, pp. 42, 659; vol. iv, pp. 46, 283, *passim*.

the members wanted to know whether the royal commission gave him any such power. Being told it did, they requested and received a copy of the clause in question, which was the one giving the governor a negative voice in framing and passing all laws, statutes and ordinances.[1] After duly considering the matter, they informed his honor that the clause under review referred only to such rules, statutes and ordinances as had to pass all three parts of the legislature and could not "by any rational construction" be interpreted to mean the extension of the governor's power to negative their speaker. Moreover, they said that Bishop Burnet in his *History*[2] laid it down as "a settled point in the House of Commons in the days of King Charles II that the house had an undoubted right of choosing their speaker and that the presenting him to the king was only as a matter of course and not for approbation, which settlement," they continued, "we cannot learn has ever been questioned by any king or queen of Great Britain since." They, therefore, requested him not to insist upon disapproving their choice.[3] In reply, Wentworth told them that he would consider their request, if they would add that they did not question his right to negative their speaker. This the representatives declined to do, regarding it as an infringement of a privilege they had long enjoyed. However, although insisting upon their right to choose whomever they desired for speaker, they concluded to present a new one, but in a preamble to the note they sent the governor, informing him of their action, they expressed themselves in justification of their former choice. Thereupon, Wentworth signified his acceptance of their choice, though

[1] *Provincial Papers*, vol. iv, p. 485.

[2] *Ibid.*, vol. iv, p. 486.

[3] *Ibid.*, vol. iv, p. 284.

expressing his disapprobation of the preamble.[1] By this action the matter was really compromised.

From this time until January, 1745, every speaker, chosen by the house, was promptly approved by the governor. Then the house refused to allow certain members, summoned from places hitherto unrepresented in the assembly, to take part in the election of the speaker. At first the governor declined to approve the speaker until all the members, summoned by the king's writ, had been allowed the privilege of voting in the election of that officer, but, as the war demanded prompt action on the part of the assembly, he deemed it best to drop the dispute until the king's pleasure was known on the question of admitting the newly returned members. Accordingly,[2] he signified his approval of their choice, that the business of the session might not be further delayed.

In January, 1749, Governor Wentworth disapproved the choice of Richard Waldron, who was the leader of the opposition and his most bitter opponent. At the time, the house was also contesting the right of the governor to send the king's writ to whatever places he chose, and it had in fact refused to seat the representatives sent from the towns in response to those writs and would not allow them to take part in the election of the speaker. Accordingly, when Wentworth directed the house to choose another speaker, he also commanded those present both to seat the newly returned delegates and to allow them to participate in the election of a new speaker, for until they did take part in the election, no speaker would be approved by him. In reply, however, the representatives declared that they

[1] *Provincial Papers*, vol. iv, p. 286.

[2] *Ibid.*, vol. v, p. 264. January, 1744–5.

would neither choose another speaker nor admit the delegates concerned until the governor could produce sufficient evidence to support him in his demands. A few days later they sent up a message, containing such reasons and precedents as they thought justified them in their course. Among other things, they recapitulated what Bishop Burnet said in his *History* in regard to choosing a speaker and called attention to the fact that when the royal form of government was put in operation in Massachusetts,[1] it was appointed that each town should have two representatives in the first assembly and "that they with the other branches of the legislature should determine what members should be afterwards sent to represent the country towns and places." Moreover, they referred to the custom hitherto in vogue in New Hampshire and resolved to adhere to their "rights and privileges in both cases," until the governor could produce such evidence as would establish his claims. This, they declared, was their final determination on these two points. And, indeed, it was so, for, notwithstanding the repeated messages of the governor, the house refused to retreat from its position. It maintained throughout that the appointment of the speaker was not an act of government but a mere formality. On his part, the governor declined to yield on the ground that the two points involved were "prerogatives of the highest order and too delicate in their nature" for him to dispense with. Although the representatives declared themselves ready to proceed upon the business of the session and sent up votes for the Board's concurrence, the latter declined to pass upon them, declaring that it "did not look upon the house as qualified to pass any votes that needed the council's concur-

[1] *Provincial Papers*, vol. vi, p. 76.

rence till they had chosen a speaker approved of by the governor."[1] As they would not yield, the assembly was kept under short adjournments and prorogations until the triennial act forced a dissolution.[2] As certain letters, later brought to light, clearly show, there was another reason for the remarkable conduct of the lower house than that which appears in the records of that body.[3] It was a part of the plan, devised by Waldron and his most confidential followers to oust the governor. Their policy was to so embarrass him and so discredit his administration both at home and in England as to render his removal easy and expedient, but their scheme proved to be a dismal failure. It is probable that most of the delegates entered upon the contest fully convinced of the justice of the assembly's contention, and did not at first know of the scheme to oust the governor, as the plans were divulged only to Waldron's most confidential friends and agents. But it is clear that the scheme was known in England at least as early as November 13, 1749, for John Thomlinson, the colony's agent, mentions it in a letter of that date.[4] The discovery of the evidence of the plot, therefore, robs the contest of that value, when viewed from a constitutional standpoint, which it would otherwise have had.

The following September, a new assembly was convened but the contest was not renewed.[5] After inquiring whether the governor had any instruction touching upon the matter of choosing a speaker, the house proceeded to a choice, selecting Meshech Weare, who being acceptable to the governor, was promptly approved by him.

[1] *Provincial Papers*, vol. vi, pp. 109, 111 *et seq.*

[2] *Ibid.*, vol. vi, p. 125.

[3] *Ibid.*, vol. vi, pp. 39–68.

[4] *Ibid.*, vol. vi, p. 891.

[5] *Ibid.*, vol. vi, p. 129. Sep. 19, 1752.

From this time on the point never became an issue again, for every speaker was approved by the executive. Yet, it is evident that Governor Wentworth still claimed the right to disapprove a speaker, for, when, in 1762, he was notified of the selection of Mr. Sherburne he wrote a letter to the secretary, who generally transacted matters for him whenever he could not be present in person, declaring that he was greatly at a loss to know what to do in the matter[1] "on account of Mr. Sherburne's bad state of health and incapacity to attend on the business of the session, which may occasion many inconveniences to the government; notwithstanding which" he continued, "in the present situation of things, you are to inform the house that I approve their choice, though contrary to my own sentiments."

Although the governor's right to disapprove the choice of speaker was challenged and contested, it is clear from the records that the lower branch of the legislature was not regarded as settled and in a position to transact business until the speaker was approved by the governor, and when the regular speaker was absent it was necessary to select a speaker *pro tem* before entering upon the discussion of any business.[2]

In addition to choosing a speaker it was customary also to select a clerk, in order that all the resolves, orders and votes might be duly entered and the records, books and papers properly cared for. At first a member of the house regularly officiated in this capacity, but in November, 1721, it was decided to choose one who was not a member and pay him a regular salary for his services instead of the

[1] *Provincial Papers*, vol. vi, p. 801.

[2] *Ibid.*, vol. iii, p. 630.

usual fees as had hitherto been the custom.[1] Accordingly the place was given to one, James Jaffrey by name, who continued to perform the duties of his office in a very satisfactory manner for a great many years, being regularly reappointed by the different legislatures until January, 1745, when Henry Sherburne,[2] one of the members from Portsmouth, was called upon to act as clerk until another was chosen. In this capacity he continued to officiate until a new assembly was called in June, when, by a majority of one vote, the house elected, as clerk, Daniel Peirce, a non-member,[3] who held the office for three years when he was succeeded by Meshech Weare, who represented Hampton Falls in the legislature.[4] From this time on no outsider was ever chosen, the clerk being regularly appointed from among the members of the house.[5] As compensation for his services, that officer, in addition to his regular pay as assemblyman, received a fixed *per diem* allowance during the sessions of the general assembly.

From the year 1745,[6] it is certain that prayer regularly formed a part of the opening exercises of the house, for in that year, the representatives voted unanimously "that the Rev. Mr. Fitch and Mr. Shirtleff be desired to attend upon this house every morning alternately and pray with them."[7] And regularly from that time on two ministers were appointed by each successive house for that particular purpose, while some years later the council also named

[1] *Provincial Papers*, vol. iii, p. 834, note.

[2] *Ibid.*, vol. v, p. 263. [3] *Ibid.*, vol. v, p. 324.

[4] *Ibid.*, vol. vi. p. 71.

[5] *Ibid.*, vol. vi, pp. 131, 144, 688, 801; vol. vii, pp. 60, 171, 361, *passim*.

[6] January, 1744–5.

[7] *Provincial Papers*, vol. v, pp. 267, 326, 522, 584, 808, 911, *passim*. The ministers received a regular allowance for this.

a minister to conduct similar services in their house.[1]

Although, in the early years of the provincial period, the representatives must have had some rules to guide them in properly regulating their house, still none are found in the printed records until after Bellomont's arrival in 1699. Then a set of ten rules was adopted for the better regulation of the house. Some of these were re-adopted by succeeding assemblies in substantially the same form in which they were first passed; others were afterwards amended in various ways, while a few were dropped from the list entirely and new ones substituted for them. Although each new house could adopt whatever rules it pleased, nevertheless the changes made and the new rules adopted were few and such as they were they show more system and method in regulating the house.

One of the rules provided for the election of a speaker *pro tem.* whenever the regular speaker was absent, another gave to the presiding officer the casting vote whenever there was a tie and still another stipulated that the majority of the representatives might not only dismiss a member but should also give notice to the town he represented to choose another in his place.[2] Then, there was one relating to the manner of addressing the house. This provided that permission to address the house should first be obtained from the speaker and that any remarks or speeches that were made after that was obtained should be addressed to the chair and not to the individual members. In 1728[3] it was decreed that "every member should keep his place

[1] *Provincial Papers*, vol. vii, pp. 7, 62, 168, *passim*.

[2] *New Hampshire State Papers*, vol. xix, p. 721. These remained the same throughout.

[3] *Provincial Papers*, vol. iv, p. 489; vol. v, p. 325; vol. vi, p. 133, *passim*.

and not speak out of it," while in 1771 there was a further provision to the effect that, if a member, commanded by the speaker to be silent, thought such "a command unseasonable or unreasonable the speaker shall take a vote of the house thereon to which such member shall submit on pain of forfeiting such sum as the house shall determine." [1] According to another rule, any delegate who "by any misbehavior in speech or action" justly offended any of the members of the house could be admonished for the first offense and fined as the house thought fit for the second. In 1775 this was so amended that the person, offending in this respect, could "be admonished, fined or imprisoned" as the house saw fit.[2] Still another stipulated that no member should address the house twice until every one had had liberty to speak once,[3] and, in the rule adopted in 1722, this was to apply to every matter before the house "whether it be a vote, resolve, order, or bill." [4] By another rule a fine of 5 shillings was imposed upon those, who after being entered and qualified, absented themselves without the leave of the assembly or without a proper and valid excuse. In 1743 the amount was raised to 10 shillings, but this was changed again two years later when the amount was not specified, the matter being left to the discretion of the house. In 1752 the rule was further modified and softened, so that the absentee was only "liable to be fined at the discretion of the house," and in this form it was re-adopted by succeeding legislatures up to the time the provincial government was overthrown.[5] Another of the rules adopted

[1] *Provincial Papers*, vol. vii, p. 292. [2] *Ibid.*, vol. vii, p. 373.

[3] *Ibid.*, vol. iii, p. 68.

[4] *New Hampshire Provincial Papers*, vol. iv, p. 32.

[5] *Ibid.*, vol. iii, p. 68; vol. v, pp. 204, 325; vol. vi, p. 133; vol. vii, pp. 292, 373.

in 1699 granted every member the liberty to dissent from any vote without giving a reason for so doing. Later this does not appear on the list, but it is clear from the records that the practice was continued, for quite often members asked leave to enter their dissent to a particular vote without giving any reason for their action, and, in several instances, they were not allowed to have the reason for their dissent entered in the journal.[1] A rule, adopted in 1745, provided that when anything was put to a vote every member, if required, should vote on the one side or the other immediately, and, in case he refused, he should be placed under the censure of the house.[2] This was not adopted afterwards, but in 1756 the house passed a vote to the effect that every member should answer yea or nay immediately, whenever a question was put.[3] Another rule that was early adopted regulated the method of procedure in the passage of bills presented to the assembly. This stipulated that every bill should be read three times and that there should be two adjournments before it was finally passed into an act.[4] Later, there was also a rule designating the number necessary for the legal transaction of business and another providing that no measure could be re-considered in the house by a less number than were present when it was first passed.

In reference to the number of representatives necessary for the transaction of business, the royal commission simply stated that, in order to make laws, statutes and ordinances,

[1] *New Hampshire Provincial Papers*, vol. v, pp. 332, 343, 350, 395, 443, 445, 459, 461, 506, 513; vol. vi, pp. 133, 160, 164; vol. vii, pp. 63, 173, 183.

[2] *Ibid.*, vol. v, p. 325. [3] *Ibid.*, vol. vi, p. 455.

[4] *Ibid.*, vol. iii, p. 396. It is impossible to tell when this was adopted; it was the custom at least as early as 1709. *Vide, ibid.*, vol. iii, pp. 396, 719, 725; vol. iv, pp. 323, 489; vol. v, p. 325; vol. vi, p. 133; regularly found after 1745.

the consent of the governor and the major part of both houses was necessary.[1] What number the house first determined should constitute a quorum, the early records fail to show. In fact, from an entry made in July, 1696, it appears that the question had never been decided, for on the thirteenth of that month Usher demanded to know "whether three of the assembly was a house and could adjourn and whether it was legal," to which the house replied that "there was no prefixed number appointed and that it was legal."[2] Three years later, a set of rules was adopted for the better regulation of the house, but no mention was made of any quorum. In fact until 1745 it is impossible to tell from the printed records how many constituted a quorum. From that time on, however, the number was regularly specified in the rules adopted by every succeeding assembly at its first session. Naturally the number varied from time to time. As the population of the province multiplied and the settlements became more widely scattered, the number of towns and precincts represented in the assembly increased, and, as a result, the quorum increased, but this did not always follow immediately after the number of representatives had been increased. Thus, in 1745, when the house consisted of 20 members, the speaker and at least 11 members had to be present before business could be transacted. In spite of the fact that many new places received representation in the house during the next seventeen years, the number necessary to constitute a quorum remained the same.[3] In 1762, when there were 31 present, it was voted that the speaker and fifteen members should constitute a quorum. In 1771, when the house consisted of thirty-four

[1] *New Hampshire Provincial Papers*, *e. g.*, vol. ii, p. 58.

[2] *Ibid.*, vol. iii, p. 40.

[3] *Ibid.*, vol. v, pp. 133, 325, 442, 689.

members, the quorum consisted of the speaker and sixteen members, while in 1775 it was still further increased, embracing the speaker and eighteen members. When transacting business, it appears [1] that the representatives from the oldest towns sat nearest the speaker, while the others were directly behind them, being seated in the order in which their towns received representation in the assembly.[2]

With regard to the question of judging as to the elections and return of the delegates to the lower house, it appears from the records that, although the representatives at first seem to have had some doubts as to their own power in the matter, they soon became the sole judges in such cases. Thus, in March, 1693,[3] it was the lieutenant governor who directed the sheriff to cause another meeting to be held in Portsmouth for the election of two assemblymen because it did not appear that the freeholders had been duly summoned or those elected regularly chosen. In September, 1696, when the representatives requested Lieutenant-Governor Usher to send out warrants for the choice of two assemblymen who had refused to serve, his honor declared that "they should send for them to their house, for their refusal ought to be before the house." [4] The following year Benjamin Fifield was dismissed from the house and the election of another ordered.[5] In August, 1701, the representatives dismissed Timothy Hilliard as a person unfit to be a member, because of his "misdemeanor" which was contrary to the orders of their house,[6] and they requested the council to send out the necessary notice so that

[1] *New Hampshire Provincial Papers*, vol. vi, p. 816; vol. vii, pp. 63, 173, 286, 373.

[2] *Ibid.*, vol. vi, p. 478.

[3] *Ibid.*, vol. ii, p. 88, March, 1692–3.

[4] *Ibid.*, vol. iii, p. 43.

[5] *Ibid.*, vol. iii, p. 57, 1697.

[6] *Ibid.*, vol. xix, p. 737; vol. iii, p. 146.

the vacancy thus created might be filled. In June, 1709, at a conference held to discuss the failure of Exeter to make a return respecting its choice of assemblymen, the lieutenant governor informed the representatives that they "had full power to issue forth their warrants to summon all the selectmen of the said town to appear before them" and show cause why they neglected to make such a return, and if they found them "to be guilty of contempt or other fault" they had power to fine them as they should see meet.[1] In November, 1715, the house voted to dismiss Jabes Dow, one of the representatives from Hampton, on the ground that he could not qualify as a representative because he then held the office of constable.[2] In October, 1722, a petition was received, stating that Jotham Odiorne had not been legally chosen as the representative from New Castle. In the course of an investigation which followed, the parties to the petition were summoned before the assembly and some evidence was produced by them to substantiate their complaint. But, after debating the matter among themselves, the representatives put the question to a vote with the result that Odiorne was declared duly elected.[3] In November, 1726, the house ordered a precept returned to the sheriff because it was defective. Immediately afterward, complaint was made that the election of the representative chosen for Rye was "not consonant to the act relating to the town of New Castle and the parish of Rye."[4] An investigation was at once ordered by the house but, after hearing both parties, the representatives declared that the member returned from Rye had been legally elected. The following year, the representatives

[1] *New Hampshire Provincial Papers*, vol. iii, p. 393.

[2] *Ibid.*, vol. iii, p. 600.

[3] *Ibid.*, vol. iv, pp. 334, 335.

[4] *Ibid.*, vol. iv, pp. 432, 433.

voted to dismiss John Redman, who expressed a desire to retire "by reason of his great age and infirmness."[1] The next December, when the return of James Mackeen, the representative for Londonderry, was found not to be authentic, one of the selectmen of Londonderry was called in to testify in regard to the matter.[2] After he declared that MacKeen had been legally chosen and that it was only through ignorance that the return had not been made out properly, the house accepted him as the representative from Londonderry and ordered the selectmen to make a proper return. Two days later, the house ordered the selectmen of Dover to amend their return and explain why the persons chosen did not appear.[3] In May, 1729, the representatives granted the request of James Mackeen praying to be dismissed as the representative from Londonderry.[4]

In April, 1735, Governor Belcher attempted to pass upon the election and return of some of the members of the house, when he ordered the oaths administered to all the representatives except two against whom there was "some complaint of undue election."[5] Immediately the house vigorously contested his right to pass upon the validity of the election and refused to choose a speaker until all the members were qualified. Thereupon, the governor desired to administer the oaths to all save Joshua Peirce, but the representatives insisted that they should be administered to every person returned by the sheriff's precepts and declined to do any business until that was done. At last the governor sent down the secretary to read that paragraph of his commis-

[1] *New Hampshire Provincial Papers*, vol. iv, p. 453.

[2] *Ibid.*, vol. iv, p. 468, Dec., 1727.

[3] *Ibid.*, vol. iv, p. 470, Dec. 16, 1727.

[4] *Ibid.*, vol. iv, p. 519.

[5] *Ibid.*, vol. iv, p. 681.

sion which he believed gave him the power to pass upon the question at issue, at the same time assuring them that he was "far from having any inclination to invade the least privilege of the house." Nevertheless, he thought it was his duty to support his Majesty's authority. The paragraph cited was the one which conferred upon the governor and council the power to summon assemblies in manner and form according to the usage of the province, and to administer the oaths only to those who were duly elected by the major part of the inhabitants. In reply, the representatives told the governor they were of the same opinion as before, because in the clause cited, reference was made to the usage and custom of the province which had always been for the governor to have the oaths administered to all those returned by the sheriff's precepts, while the house of representatives was the judge of the due or undue election of any of the members upon complaint made to them. But "if," they said, "your Excellency's commission or the law was silent in this matter, it is no more than reason itself requires, for, if the governor for the time being hath authority upon pretense of undue elections to prevent any member from acting in the house, it would be a power in a manner, equal to that of choosing the assembly itself." This seems to have convinced the governor of his error, for he immediately ordered the oaths administered to all.

Many additional cases might be cited, where the house, after an investigation of the facts, either duly confirmed or set aside the election of members against whose election complaint was made, but, from this time on the right of that body to be the sole judge of the election and return of its own members never appears to have been questioned.[1]

[1] *New Hampshire Provincial Papers*, *e. g.*, vol. v, pp. 272, 326, 402, 579; vol. vi, pp. 449, 806; vol. vii, pp. 199, 321, 363, *passim*.

It was left to the governor and council to determine the number of representatives to be chosen and the places to be represented in the assembly.[1] Accordingly when President Cutt issued the first summons for an assembly, he followed the example set by Massachusetts and made the town the unit of representation. Precepts, therefore, were sent to the four New Hampshire towns, Portsmouth, Dover, Exeter and Hampton and upon the day designated therein the delegates chosen met in Portsmouth, three being present from each of the towns save Exeter, which sent but two.[2] During Cranfield's administration no change was made in the number of representatives which each town had in the assembly.[3] When Usher, however, assumed the reins of government in 1692, an order of the lieutenant governor and council fixed the number of representatives then to be chosen at twelve. The number from each of the four towns was the same as in the past. The additional one was to come from the Isles of Shoals.[4] In 1693, after the separation of New Castle from Portsmouth, writs were issued for the election of two representatives from the former, so that when the legislature met in October, fourteen persons took the required oaths as members of the lower house.[5] Until 1715, however, the number of representatives usually

[1] *New Hampshire Provincial Papers*, vol. i, pp. 379, 436; *Provincial Laws of New Hampshire*, vol. i, pp. 503, 614.

[2] *Ibid.*, vol. i, p. 11, note, p. 37; Belknap, *History of New Hampshire*, vol. i, p. 145.

[3] *Provincial Laws of New Hampshire*, vol. i, p. 78; *New Hampshire State Papers*, vol. xix, p. 689.

[4] *Laws of New Hampshire*, vol. i, p. 517; *Provincial Papers*, vol. ii, p. 71; vol. iii, p. 2.

[5] *Provincial Papers*, vol. ii, p. 107; vol. iii, p. 13; *Provincial Laws*, vol. i, p. 565; *New Hampshire State Papers*, vol. xvii, pp. 625, 665.

present in that branch of the legislature was thirteen.[1] Generally the people of the Isles of Shoals failed to heed the governor's summons and neglected to send a representative. On several occasions the assembly specifically commanded them to elect a deputy, but no attention seems to have been paid to such summons. Finally, in 1716, the settlement was annexed to New Castle for election and assessment purposes.[2] Although Kingston was granted the right to send a representative to the assembly in 1708, nevertheless, in consequence of the war which was then raging, she was excused from sending one until sometime after the close of the struggle.[3] In 1716 a writ was sent to Stratham, and in that year Newington [4] which had been a part of Dover and had been erected into a separate parish also received representation in the assembly. For a time, however, the number of representatives from Dover was only two, but after a few years the town was regularly represented as before by three deputies.[5] In 1727 Londonderry was first represented in the assembly.[6] As there was no further increase until 1732 when Greenland and Durham sent delegates to the lower house, it will be seen that during the first half of its existence, the assembly's numerical growth was very slow. At the end of this period the number of members who sat in that house was only seventeen. From 1730 on, however, its growth was more rapid, so that by 1771 it had thirty-four mem-

[1] *Provincial Papers*, vol. iii, pp. 57, 60, 64, 270, 390, 579, 600.

[2] *Ibid.*, vol. iii, pp. 124, 465, 581, 617, 620, 646, 647; *New Hampshire State Papers*, vol. xvii, p. 643.

[3] *Ibid.*, vol. iii, pp. 369, 465, 521, 555, 579, 600.

[4] *Ibid.*, vol. iii, p. 48, 1716.

[5] *Ibid.*, vol. iii, pp. 658, 680; vol. iv, pp. 45, 260, 282, 588, 628.

[6] *Ibid.*, vol. iv, pp. 261, 484, 588, 628; Parker, *History of Londonderry*, p. 345.

bers, or just twice as many as it had in 1730 and almost three times the number summoned in 1692.[1] At no time, therefore, could it be considered an unwieldy body. Circumstances naturally favored its rapid growth during the latter part of the provincial period. In the early years of the period of royal control and in fact during a great part of the period covered by the Indian and inter-colonial wars the colony grew very slowly, for the almost continual strife along the frontiers and the constant fear of the depredations and onslaughts of the savages prevented the settlements from expanding, kept the people within comparatively well-settled areas and discouraged immigration into the wilderness. But when the fear of the Indians ceased and peace prevailed on the frontier, the settlements became more widely scattered, and, the farther into the wilderness they extended and the more scattered and isolated they were, the greater became the need of separate delegates to represent their interests properly in the assembly.

Although the commission granted to the governor, with the council's advice, the right to say what places should be represented in the assembly, nevertheless, the house claimed the right to have a voice in the matter. Thus, in November, 1708,[2] the house passed a vote which received the concurrence of the council, granting the freeholders of Kingston "free liberty" to send a representative to the general assembly, but the inhabitants did not avail themselves of this privilege as they were just at the time hard pressed by the war. In May, 1711,[3] both houses voted that "the parish and precinct in the woods, called Kingston, and the parish and precinct upon the Isles of Shoals, called Star Island, be

[1] *Provincial Papers*, vol. v, pp. 259, 322, 592, 730, 751; vol. vi, p. 801; vol. vii, pp. 58, 171, 286; vol. ix, p. 328.

[2] *Ibid.*, vol. iii, p. 369, Nov. 18th.

[3] *Ibid.*, vol. iii, p. 465.

served with the ordinary warrants to send one person each to represent them in the house and no more till further order." This [1] brought forth a petition from the inhabitants of the former praying to be relieved from sending a representative and paying any part of the public taxes, inasmuch as their circumstances were "in a very low condition" and the enemy was likely to be as troublesome as ever.[2] After taking the matter under consideration,[3] it was resolved to grant the prayer of the petition, if the settlers would "assist the scouts with pilots at their own charge whenever required." Two years later the assembly again voted that Kingston be empowered to send a representative.[4] Accordingly, when the new assembly was called, a precept was also issued for the election of a delegate from that town, which was regularly represented in the lower house from that time on.[5] As Star Island was still unrepresented, the house in April, 1715, ordered the sheriff to send forth his precept immediately to the inhabitants requiring them to send a representative to the assembly within five days.[6] At the time appointed, however, no one seems to have appeared. In December, the inhabitants were ordered to send a representative to the next sitting of the assembly but again no one came.[7] Finally, the place which had been made a town by the name of Gosport, was joined to New Castle for election and assessment purposes.[8] In May, 1718, the house granted the new parish of Hampton Falls liberty to send one representative to the assembly.[9] In 1725 steps were

[1] *Provincial Papers*, vol. iii, p. 520. [2] *Ibid.*, vol. iii, p. 521.
[3] May, 1712. [4] May, 1714.
[5] *Ibid.*, vol. iii, p. 555, *cf.* pp. 658, 680, *passim*.
[6] *Ibid.*, vol. iii, p. 581. [7] *Ibid.*, vol. iii, pp. 617, 619.
[8] *Ibid.*, vol. iii, p. 647.
[9] *Ibid.*, vol. iii, pp. 733, 740; vol. iv, p. 45. Thereafter, however, Hampton, which hitherto had three deputies, had only two.

taken to have Londonderry represented in the lower house. Although this place had been settled some years before by a company of Scotch-Irish and had already been regularly incorporated, it had hitherto been unrepresented in the legislature and had borne no part of the province charges. Now both houses[1] requested the governor to have a precept sent to the town for the election of an assemblyman and to order a list of rateables made out. This, however, the settlers did not as yet desire, for its selectmen presented a petition[2] praying not only to be excused for the present from sending a representative, but also to be exempted from taxation. The council declared itself in favor of granting the prayer of the petition, but the house could not be prevailed upon to concur. Finally a precept was sent to the town for the election of a representative.[3] In 1726, after Rye had been made a parish, the house voted that a delegate should be sent to represent it in the assembly.[4] Although Greenland petitioned several times for permission to send a representative, a precept was not sent to the town until 1732.[5]

In 1741 and 1742, several acts for the incorporation of new parishes passed the legislature, which contained clauses prescribing the manner in which these parishes should be represented in the Assembly. That is to say, these acts prevented the governor from exercising the power of sending writs to such of these parishes as he might choose, by stating definitely in the acts how each was to be represented in the assembly. In January, 1745, the right of the gov-

[1] *Provincial Papers*, vol. iv, pp. 173, 401.

[2] *Ibid.*, vol. iv, pp. 208–9.

[3] *Ibid.*, vol. iv, pp. 467, 468.

[4] *Ibid.*, vol. iv, pp. 226, 427. Thereafter New Castle had but one representative instead of two. See Parson, *History of Rye*, p. 20 *et seq.*

[5] *Provincial Papers*, vol. ii, p. 739; vol. iv, pp. 618, 628, 785, 786.

ernor to send a writ to whatever places he chose without consulting the assembly was seriously questioned.[1] Soon after the members assembled for business, one of the representatives observed that there were more persons present than usual, and, upon inquiry, found that they had come in response to writs, requiring their respective towns to choose and send persons to represent them in the general assembly. Thereupon, a message was sent to Governor Wentworth, informing him that as there were five gentlemen present representing respectively Rumford, Haverhill, South Hampton, Chester, and the district known as Methuen and Dracut, "places" which as far as the house knew, had "no power, by any law or usage of the Province," to send representatives,[2] they would like to know "by what means those places are authorized to send a member to this court." In reply, the governor said they were called "by the king's writ which was issued by the advice of the council."[3] Upon receiving this, the house at once proceeded to draft a reply, when a message came to choose a speaker immediately. This the representatives did after passing a vote to exclude the members in question from taking part in the election. The governor at once wanted to know the reason for this and was quickly informed that it was because the house did not know of any law or usage of the province which entitled those places to the privilege of sending members.[4] The governor then told them that the delegates had been called "by the king's writ, agreeable to former practice," and he knew of no other method by which they could be called. If, however, they knew of any such method, he desired them to acquaint him with it

[1] *Provincial Papers*, vol. v, pp. 260–1, January, 1744–5.
[2] *Ibid.*, vol. v, p. 261. [3] *Ibid.*, vol. v, p. 262.
[4] *Ibid.*, vol. v, p. 263.

that the public business might not be hindered. In a short time a message was sent up citing the cases of Kingston, Rye and Greenland to show that "no town or parish, not before privileged, ought to have a writ sent to them to choose a representative without a vote of this house or act of the general assembly."[1] This seems to have created some doubt in the governor's mind, for he ordered an adjournment in order that they might both furnish themselves with precedents. Later, he desired to know if there was any law which would justify them in excluding any members, called in by the king's writ from voting in the choice of a speaker.[2] The latter, of course, the representatives could not cite, for there was no law on the subject; but they did give additional precedents. They referred to the cases of Londonderry and the other places already mentioned as well as to the acts incorporating the parishes of New Market, Durham, Brentwood and Epping, in all of which provisions had been inserted respecting their representation in the general assembly. From all this, the lower house concluded that the right to representation in the house belonged to the General Court.[3] Consequently, such persons as were called in from places not privileged by the assembly ought not to vote for the choice of a speaker, but should be excluded just as if they came from another province. This, by no means, convinced the governor that the right to introduce new members was vested in the general assembly, but as the situation of affairs relative to the war demanded immediate attention, he thought it best for his Majesty's immediate service not to enter for the present further into the dispute, but to let the matter rest until the king's pleasure in the matter was known.[4] A little later a delegate ap-

[1] *Provincial Papers*, vol. v, p. 263.
[2] *Ibid.*, vl.o v, p. 264.
[3] *Ibid.*, vol. v, p. 264.
[4] *Ibid.*, vol. v. p. 264.

peared to represent the district of Dunstable, Litchfield and Nottingham,[1] but, like the others, he was also refused a seat until he could show that prior to the issue of the king's writ the right to send a representative had been granted the district by some law, custom or usage of the province.

When the assembly was at last dissolved and another called, writs were not sent to those places which had been refused by the house representation in the assembly because no word had been received from England as to the course he should pursue with reference to those places. When the answer finally came, he found he had been fully upheld in his contention. Moreover, to support him in his demands, an additional instruction was issued.[2] This declared that, inasmuch as the right to send representatives "was founded originally in the commission and instructions given by the Crown to the respective governors, his majesty may lawfully extend the privilege of sending representatives to such towns as his Majesty may judge worthy thereof." Furthermore, it directed the governor to dissolve the assembly as soon as it could be conveniently done, and, when calling a new one, to issue out writs to those places in particular, which had been refused representation in the house and support the rights of the delegates summoned in response to those writs.[3] Finally, he was to signify his Majesty's pleasure in the matter to the assembly, but this Wentworth did not for some time deem it best to do.[4]

When a new assembly was summoned to meet, in January, 1749, writs were sent not only to the places that had been served with them in the year 1744, but also to districts[5] that had never yet been called upon to send a member to

[1] *Provincial Papers*, vol. v, p. 295.
[2] *Ibid.*, vol. vi, p. 82.
[3] *Ibid.*, vol. vi, p. 82.
[4] *Ibid.*, vol. vi, pp. 90–1.
[5] *Ibid.*, vol. vi, pp. 69, 70, January, 1748–9.

the legislature. After the oaths had been administered to all, the house voted not to allow those present from unprivileged places to have a voice in the selection of the speaker. Accordingly a speaker was chosen without them, but the governor promptly disapproved of the choice and declared that no speaker would be approved by him unless every member, returned in answer to the king's writ, took part in the election.[1] The house then declared it would neither choose a new speaker nor admit the members in question until it was convinced that the governor possessed the right he claimed he possessed. Later, it referred to the case of Massachusetts, where the charter expressly provided that each town should have two representatives in the first assembly[2] and that the entire legislature should determine what members should be afterwards sent to represent the country towns and places. References were also made to the usage of New Hampshire and a resolve was passed not to admit the persons affected unless the governor could show authority for what he had done. Hardly had this been done, when the representative for Rumford appeared, and, like the others, was refused a seat until he could show that the place had a right by some law, usage or custom of the province to send a representative.[3] Almost a month later two others came into the house. When questioned as to their right to a seat, they produced the royal instruction above referred to and declared that it gave them a right to attend as members of the legislature.[4] Thereupon, the house voted to address the king both concerning the grievances under which they claimed the province was laboring and respecting the partial representation which, they as-

[1] *Provincial Papers*, vol. vi, p. 71 *et seq.*

[2] *Ibid.*, vol. vi, p. 76. [3] *Ibid.*, vol. vi, p. 77, January 12th.

[4] *Ibid.*, vol. vi, p. 82, February 8th.

serted, had been made with regard to the places which they considered as unprivileged to send members to the legislature.[1] Moreover, the house persisted in its refusal to admit the representatives from the unprivileged places in spite of the royal instruction, declaring that the latter could not at any rate be interpreted to extend to places not specifically mentioned in it.[2] But the governor told the members it was useless to wrangle over the names of the towns the members were called from, because his commission gave him power to call representatives from such towns as he thought worthy of representation. "If," he continued, "I had thought ten other towns worthy of sending representatives, I should in obedience to the royal instruction have supported their election as zealously as I shall the election of those who have now been refused admission."[3] Thereupon, the house voted to suspend the admission of the newly returned members until his Majesty's pleasure was further known.[4] The governor, however, insisted that the newly returned members should be seated and informed the house that no business could be transacted until his demands were complied with. But the representatives were just as determined not to comply, so that a deadlock resulted which lasted until the triennial act forced a dissolution in January, 1752.[5] From some letters which were later brought to light, it appears that this determined opposition of the house was but part of a scheme, conceived by Waldron and some others of the governor's opponents, to have the governor removed from office.

The address, which had been drawn up in pursuance of the vote of the house and which, in addition to the matters re-

[1] *Provincial Papers*, vol. vi, p. 83. [2] *Ibid.*, vol. vi, p. 85.
[3] *Ibid.*, vol. vi, p. 87. [4] *Ibid.*, vol. vi, p. 88 *et seq.*
[5] *Ibid.*, vol. vi, p. 124.

ferred to in that vote, contained a request for the governor's removal, was not approved by the person to whom it was sent and so was never presented to the king.[1] In England the matters in dispute were regarded as prerogatives which belonged without question to the crown, and not even the colony's greatest friends could find any justification for the assembly's action nor could they hope for anything but a complete vindication of the governor.[2] John Thomlinson, the colony's life-long friend and agent, wrote about the matter in the following vein. "I must say," he wrote, "that nothing ever was or can be more maturely and solemnly considered, before the instruction was settled than this affair was[3] . . . They [the Board of Trade, the attorney and solicitor generals, etc.] very fully declared that the governor had acted according to his instructions and done what he had a legal power to do and that the Crown had an indisputable legal right to incorporate any town here and qualify the same to send members to Parliament." "What," he said in another letter, "what must his Majesty and his ministers have said to a complaint against his Majesty's governor, telling his Majesty his governor had done just as his Majesty had ordered . . . in his Majesty's instruction so solemnly settled, and also that the governor had taken upon him to negative the speaker. Surely his Majesty and all his Privy Council would have declared that the governor had acted right in both cases and if this address was calculated and designed to turn out the governor, as I was told it really was in favor of a Massachusetts man, it would not have been in your power or in the power of the most sanguine of his enemies to remove him."

[1] *Provincial Papers*, vol. vi, pp. 66, 92.

[2] *Ibid.*, vol. vi, pp. 66, 888, 891.

[3] *Ibid.*, vol. vi, pp. 887, 888.

When the next assembly was convened,[1] there was no such determined opposition to embarrass the governor. All the members present were seated without a contest and a speaker was quickly chosen, acceptable to the governor. The representatives, moreover, resolved to do all in their power to restore that "happy union" which formerly existed between the respective branches of the legislature, "to extricate the government out of its present difficulties and to advance the true interests thereof."[2]

During the session, however, the subject came up in another form. Upon receiving some letters from the Board of Trade, the governor called the attention of the house to their contents, which in part referred to certain acts passed by the assembly some years before.[3] These acts, which were four in number, were those incorporating new parishes in the towns of Londonderry, Exeter and Hampton. In two of them clauses had been inserted, directing that they should have "all the privileges of other towns and parishes saving only the choosing a representative in the General Court," in which matter the inhabitants were to join with other towns; while in the other two acts, the new parishes were to remain with the old towns from which they had been separated "as to the choosing of representatives until further order of the General Court." To these clauses, the Board took exception as they appeared to encroach on the prerogative of the Crown, inasmuch as they excluded the governor from sending writs to whatever places he chose. Commenting on this, the Lords of Trade declared that the governor's yielding to the assembly in suffering them to insert such clauses in the acts, empowering or restraining the

[1] *Provincial Papers*, vol. vi, p. 127, September, 1752.

[2] *Ibid.*, vol. vi, pp. 135, 136, 161.

[3] *Ibid.*, vol. vi, p. 139, 1741-2, *cf.* vol. v, p. 256; vol. ix, pp. 455, 802.

towns from sending representatives to the general assembly, has, they feared, "in many points been the occasion of the extraordinary encroachments they have from time to time continued to make and have at length carried to so dangerous a pitch."[1] They, therefore, admonished him to be very careful in the future about giving his assent to such bills. As for disallowing the acts, now that the parishes were settled, they said that as this might greatly affect the prosperity of the inhabitants, they would recommend instead that the governor urge upon the assembly the necessity of explaining and amending the acts in the particulars mentioned.[2] Should the legislature however refuse to make the necessary alterations, they would then recommend that the acts be laid before the king for disapprobation and charters of incorporation recommended for those particular parishes. But, although the legislature took no steps to amend the acts, nothing further was done in the matter.

From this time on, there were no further contests respecting the admission of members, sent from places hitherto regarded as unprivileged, until the close of the provincial period. Governors continued to send writs to any places they chose, while the house as regularly admitted the delegates, sent in response to such writs. Several attempts, however, were made to limit not only the towns from which representatives might be sent but also the number of representatives which each might send. For instance, in March, 1762, the house appointed a committee "to consult and prepare a bill for saying what towns in this government shall send members to represent them in the general assembly, either by their proportion of the province tax or the number of the inhabitants."[3] After the bill was pre-

[1] *Provincial Papers*, vol. vi, pp. 138, 139.

[2] *Ibid.*, vol. vi, p. 139.

[3] *Ibid.*, vol. vi, p. 820.

sented, it was resolved that the basis of representation should be determined by the number of qualified voters in the place, of which there should be at least one hundred and twenty.[1] After passing the lower house, the bill was sent to the council which agreed to the measure after certain amendments which it suggested were adopted, but the governor did not approve it.[2] The following year a similar measure met the same fate; but this did not discourage the assembly, for, in May, 1764, another bill was passed with a saving clause, deferring its execution until the king's pleasure was known.[3] At the same time the colony's agents in England were instructed "to use their utmost endeavors to obtain the approbation" of the act. Their efforts in this direction, however, were not successful, for on the 26th of June, 1767, the act was formally disallowed by the king.[4]

Although no other act on the subject was passed, it is evident that the house still claimed the right to have a voice in the matter, for, in 1775, it again contested the right of the governor to send writs to whatever places he chose. When the call for a new assembly was made in May of that year, the governor ordered writs sent to Plymouth, Orford and Lyme, places which had never before been favored with representatives in the assembly. After the session opened, several petitions were received, complaining that certain members had been returned in "an illegal or unconstitutional manner."[5] Thereupon, a committee was appointed which in a few days presented a report, giving a brief history of the manner in which new towns had been accorded, in the past, the privilege of sending representatives to the assembly.[6] Among other things, it asserted, in the most positive terms, that no new towns had been allowed to send

[1] *Provincial Papers*, vol. vi, p. 824.
[2] *Ibid.*, vol. vi, pp. 829, 840.
[3] *Ibid.*, vol. vii, p. 43.
[4] *Ibid.*, vol. vii, p. 200.
[5] *Ibid.*, vol. vii, p. 373.
[6] *Ibid.*, vol. vii, p. 378.

representatives to the general assembly until 1744, "except by a vote of the house," that in that year and again in 1748 the governor did attempt to introduce new members simply on the strength of the king's writ, but the houses had refused to admit them; and that since that time there had been "instances of other houses suffering members so sent to take their seats without taking any notice of the impropriety thereof." However, as this method of admitting new members appears to the committee to be "a manifest breach" of the privileges of the house and "directly contrary to the spirit and design of the English constitution and apparently pregnant with alarming consequences," they submitted it to the consideration of their colleagues whether the house could "with any degree of propriety . . . whatsoever allow such an encroachment to be made on their privileges so opposite to the English constitution," especially as there were a great number of other towns in the province of much greater importance than these that have not the privilege of sending a representative and, in their opinion, they cannot send a representative "in a constitutional way until an act of government is made for that purpose." The question then being put, whether to admit the new members or not, "it clearly passed in the negative." [1]

By this time the situation in the colony was very critical. The wave of excitement against the mother country was running high. The tension was very great. The love of order and respect for law were fast giving way to confusion and disorder,[2] so that the governor deemed it best under the circumstances to suspend for the present the further consideration of the question, and accordingly adjourned the assembly for almost a month in the hope that a serious desire for a reconcilation with the mother country might spring up throughout the province.

[1] *Provincial Papers*, vol. vii, p. 378. [2] *Ibid.*, vol. vii, pp. 380, 381.

In this, however, he was to be disappointed. Soon after the legislature re-assembled, he called the attention of the representatives to the fact that in excluding the newly returned members, they deprived the electors of their privilege and a whole county of any representation in the assembly. Moreover, he declared he could not "consistent with his duty pass by a measure so essentially infringing on his Majesty's prerogative and the rights of the people," and therefore recommended that the vote excluding the members be rescinded.[1] In reply the house expressed itself as sorry to find that the governor should intimate that they deprived electors of their privilege and trusted that the people of the county of Grafton would not think they had been deprived of part of their rights, because the members had been dismissed, "for it is very notorious," they added, "that this and former houses of assembly have long wished that this province might be more generally represented in a constitutional way and have long endeavored that an act of government might be passed, enabling the governor to issue writs to such towns to send members as might be provided for in said act . . . but they have not been able to have such an act established." Therefore, they were determined not to rescind their vote.[2]

Thereupon, the governor sent another message, setting forth the royal side of the question. He said also that during his own administration three new members had been called for the county of Cheshire and, upon petitions to him in council, it seemed "equally reasonable" to extend the same privilege to the county of Grafton.[3] He was "sorry," he continued, "to observe that the house did not meet with a disposition to proceed upon the affairs of the province,"

[1] *Provincial Papers*, vol. vii, p. 383. [2] *Ibid.*, vol. vii, p. 384.
[3] *Ibid.*, vol. vii, p. 385.

but in the hope that the matter might receive in the future more favorable consideration in a fuller house he adjourned them to the fall. This, however, proved to be the last message sent by Governor Wentworth to the general assembly,[1] for it never met again under the provincial government.

Now a word respecting the method of filling such vacancies as occurred during the sessions of the legislature. In such cases, the house usually took the initiative. Sometimes it requested the governor to send a new precept to the town, but more often it ordered its own speaker to issue a warrant for the election of another member. During the last half of the provincial period, the latter was the regular method adopted whenever a vacancy existed. In February, 1753, Governor Benning Wentworth objected to this practice.[2] After Richard Waldron had renounced his right to sit in the house, a precept was issued by the speaker for the election of a successor. When the newly elected member appeared, the governor, before swearing him in, asked to see the precept. This being delivered to him, he sent down a message, saying that the method of introducing the member was "directly contrary" to what his Majesty had directed and therefore the new delegate did not appear to him to be legally entitled to a seat. Notwithstanding this, however, he thought, that, as the session had been already "spun out to an unusual and unreasonable length," it would be best to allow him to be qualified but "this condescension," he added, "is not to be pleaded as a precedent in similar cases." This, however, did not stop the practice, for, when vacancies occurred during the session, precepts continued to be issued by the speaker for the election of representatives to fill them.[3]

After an assembly once met, it was not within the power

[1] *Provincial Papers*, vol., vol. vii, p. 387. [2] *Ibid.*, vi, pp. 178, 181.

[3] *Ibid.*, vol. v, p. 784; vol. vi, p. 827; vol. vii, pp. 85, 92, 96, 112, 363, *passim*.

of either house to prorogue or dissolve itself. This power was vested solely in the governor who was directed in the royal commission to prorogue and dissolve the assembly whenever he judged it necessary. In the later commissions it was specifically stated that he might also adjourn the legislature from time to time as he saw fit, while the later instructions positively forbade the assembly to adjourn itself, except from day to day, without the governor's permission.[1] As a rule, the latter exercised this power with great discretion and in a manner satisfactory to all concerned, but there were times when the house, in particular, felt itself aggrieved at the governor's orders in proroguing or dissolving it.

Occasionally it would send up a request for an adjournment. These were sometimes made verbally, at other times they were embodied in messages and in one instance at least the request took the form of a petition.[2] Usually, governors were disposed to comply with the wishes of the house, but there were times when a refusal was deemed necessary or expedient. And this was apt to be the case whenever the executive thought the condition of the king's business did not seem to warrant a compliance or the royal or provincial interests were likely to suffer in consequence of it.[3] Most frequently the adjournment was desired because the season of the year for sowing or reaping or the private business of the members necessitated their presence at home.[4] In quite a number of cases, particularly when the house was bent on encroaching upon the prerogative and doggedly re-

[1] *Provincial Papers*, vol. i, p. 436; vol. ii, p. 59; *Provincial Laws of New Hampshire*, vol. i, pp. 51, 504, 615; vol. xviii, *passim*.

[2] *Provincial Papers*, vol. vii, p. 316.

[3] *Ibid.*, vol. v, pp. 218, 509, 561, 876, *passim*.

[4] *Ibid.*, vol. iv, pp. 210, 510; vol. v, p. 192; vol. vi, p. 128; vol. vii, pp. 36, 127, 317, 362, *passim;* vols. v, vi, vii, *passim*.

fused to make such alterations in the votes and bills before it as the governor thought were essential to prevent an infringement of the prerogative, the representatives would ask to be allowed to return home until such time as the governor decided either to approve or veto the bills or votes in question. In such cases, however, the executive usually kept them sitting in the hope that they would ultimately yield. In several instances, the house even expressed the wish not to be adjourned until certain business was finished or certain acts before it were passed. On several occasions, also the representatives in their request even named the day to which they desired to be adjourned. In 1731 Governor Belcher regarded this as an infringement of the prerogative, for when the representatives in September of that year amended a vote of the council by designating the particular day, October the 18th, as the day to which the assembly should be adjourned, the council very properly returned the vote to be reconsidered while the governor reprimanded them in a message in which he cautioned them not to move out of their own line, inasmuch as the king had reserved to him "the entire power of adjourning, proroguing and dissolving all general courts." Moreover, he assured them that he would use the power with which the king vested him as he himself judged would "best advance his Majesty's service and the interests of the province." [1]

The chief distinction generally observed between an adjournment and a prorogation may best be illustrated in the following way. When an adjournment was declared, the business before the legislature was merely suspended until the next meeting. In other words, an adjournment left the matters still before the assembly in the same state as they would be in, were just a recess declared. When, on the

[1] *Provincial Papers*, vol. iv, p. 607.

other hand, the assembly was prorogued, all the votes, bills, and resolutions that had not received the concurrence of the council or the assent of the governor died the moment the prorogation was announced and were rendered ineffectual and void. A prorogation, therefore, was more likely to be resolved on when measures displeasing to the governor or injurious to the interests of the colony or the Crown were being acted upon. In such cases, the governor, by promptly declaring a prorogation, could effectually prevent unfavorable action being taken by the legislature. In many cases, however, a governor prorogued a refractory assembly in the hope that after a few weeks' reflection the members would assume a more favorable attitude.

If, after an assembly had been prorogued, it was necessary to call it together again within the period covered by the prorogation, it was usual for the governor to order the members to meet in special session to consider and transact such business only as the assembly had been specially summoned to consider and transact.[1] Instead of summoning the members in special session, some governors preferred to dissolve the assembly and summon a new one; but after 1728 this could not be done if immediate action was necessary, because a period of at least fifteen days had by law to elapse between the time the writs were issued and the time the delegates were chosen.[2] Usually such special sessions were necessary during war-time, when the exigencies of the struggle necessitated prompt action on the part of the legislature. Most of them were held during the administrations of Governor Dudley and Governor Benning Wentworth. In the latter's time such special meetings were regularly

[1] *Provincial Papers*, vol. iii, pp. 289, 398, 399, 401, 458, 478, 491, 505, 538; vol. iv, pp. 319, 345, 385, 457, *passim*.

[2] *Provincial Laws*, ed. 1771, p. 166.

called special conventions and all the business then transacted had to be ratified and confirmed at the next regular session of the assembly. Furthermore, it appears that the members at such conventions had no power to pass any laws or act in a legislative capacity.[1]

From the time when Usher took up the reins of government in 1692 until John Wentworth, the last royal governor, withdrew from the province at the opening of the revolution, nearly fifty assemblies in all were summoned, and of these almost half were called previous to the enactment of the triennial act. Of the entire number all but fourteen were convened prior to the installation of the first separate governor of the province. In other words, about 70% of all the assemblies summoned in New Hampshire during a period of more than eighty years [2] had been dissolved before Benning Wentworth was sworn in as governor in 1741.

Naturally, the life of the various assemblies differed widely, owing to the fact that the governor could dissolve the legislature whenever he chose. In fact, the difference is very marked at times, varying from a few days to more than six years, but the general average for all the assemblies taken together is found to be about a year and a half.[3] Most of the short-lived assemblies were summoned during the administrations of Usher and Belcher, while the longest sat during the time when the commissions of Dudley and Shute were in force. From the accession of Benning Wentworth in 1741, however, almost all the assemblies were continued in existence the full three years allowed by the triennial act.

[1] *Provincial Papers*, vol. iv, pp. 295, 299, 426, 858; vol. v, p. 533; vol. vi, pp. 391, 534, 599, 602, 607, 608, 845; vol. vii, p. 29, *passim*.

[2] 1692–1776.

[3] *Provincial Papers*, vol. iii, pp. 42–8; vol. iii, pp. 390–598, 5 yrs.; vol. iii, pp. 270–389, 6 yrs.; vol. iii, p. 702; vol. iv, p. 44, 5 yrs.; vol. iv, pp. 45–259, 5 yrs. Many of only a few weeks.

Sometimes this power to dissolve assemblies was used by governors to rid themselves of refractory bodies, or to prevent the passage of unfavorable legislation or the discussion of matters displeasing to them or prejudicial to the royal interests. Of course, governors hoped, by dissolving an assembly for any of these reasons, that a new one might be called which would not offend in these particulars and would prove also more tractable; but, as a rule, nothing was gained by frequent dissolutions, for in most cases the complexion of the house remained the same as before. The most frequent offenders in this matter were Usher and Belcher. During the latter's administration, no less than five assemblies were dissolved because they refused to pass a supply bill which the governor and council could approve. The house took occasion to speak of the many dissolutions, declaring that such repeated dissolutions which seem to compel them to a way contrary to the interest of the people they represent were "very unhappy precedents," whatever sentiments his excellency entertained on the subject, and would be thought a grievance not only by the representatives of New Hampshire but also by the assemblies of the neighboring provinces.[1] In reply Belcher declared that, as he was always "tender of the privileges of the house," he would always "be careful to maintain his Majesty's prerogative in using the power he has delegated him of adjourning, proroguing and dissolving general assemblies . . . and this," he continued, "I shall do from time to time as I shall judge may most of all conduce to the king's honor and interest and to the good of the province. Nor do I see any great inconvenience in the dissolution of an assembly since there are but twelve towns in the province that send representatives, of which the most remote is not a day's

[1] *Provincial Papers*, vol. iv, pp. 679, 688.

journey from the place where you commonly sit and an assembly according to the law of the province can be convened in the space of fifteen days from the date of the king's writ. But," he went on to say, "be that as it will, as I have at no time invaded the rights of your house, I think it had well become you not to have mentioned anything to me that carries the face of bearing upon his Majesty's just authority." [1]

At first the only check upon the governor's power of dissolution was imposed by an English statute which required a dissolution within a certain time after the death of the reigning sovereign. This was probably the law to which Dudley had been referred, when he told the house in 1714 that he had the opinion of the gentlemen of the law that he could not continue the assembly any longer upon a writ made out in the reign of the late queen.[2]

At least twice during the colonial period, doubts were entertained as to the legality of an assembly's existence. The first time it was when Governor Bellomont died. Then the members debated whether their power was not ended by his death and finally referred the matter to the council for their opinion, which was that the powers in an officer were not altered by his death. The next time it was when Lieutenant-Governor Vaughan dissolved the assembly in utter disregard of the governor's orders. The governor at once claimed that he alone under the circumstances could dissolve an assembly and accordingly ordered it reconvened, but a few of the members refused to sit, claiming the dissolution was valid. Consequently it could no longer have a legal existence. The governor's view of the matter, however, prevailed.

[1] *Provincial Papers*, vol. iv, p. 698.

[2] *Ibid.*, vol. iii, p. 131, 578.

Although public sentiment was in favor of fixing a time beyond which no assembly could be kept in existence, still no serious efforts were made to secure that object until 1721, when the house voted that the governor be desired to pass an act providing that no assembly should continue in existence for a longer period than three years.[1] The following year a memorial was sent to the executive, humbly praying that the assembly might be dissolved inasmuch as it had been already kept in existence for more than five years and the towns considered it a grievance not to be able to have a choice of assemblymen every three years.[2] Upon receiving the memorial, Lieutenant-Governor Wentworth expressed himself as always ready to comply with the requests of a house of representatives when the circumstances and affairs of the province would allow of it, and, even in the present case, although he thought the memorial was without precedent, nevertheless he declared he would take it under consideration and endeavor at the proper time to make them easy. Meanwhile, he desired them to dispatch the business before their house. A few days later, the representatives expressed the opinion that the governor be reminded of dissolving the assembly, but Wentworth did not see fit to order a dissolution for more than a month afterward.[3] Late in the fall of the following year the subject was again brought forward and this time a bill providing for the triennial election of assemblymen was presented, with a saving clause deferring its execution until the king's pleasure was known, in order "that his Majesty's prerogative may not be infringed."[4] These last words,

[1] *New Hampshire State Papers*, vol. xix, p. 153.

[2] *Provincial Papers*, vol. iv, p. 24.

[3] *Ibid.*, vol. iv, p. 44, July 28, 1722.

[4] *Ibid.*, vol. iv, pp. 91, 96, 112–3, 115.

however, about the infringement of the prerogative did not meet with the approval of the house, which immediately voted to strike them out, after which the bill passed both houses and received the lieutenant governor's approval.[1] Then instructions were ordered sent to the colony's agent in London, urging him to press the matter before the proper authorities there.[2] The prospects of success, however, were very remote. In the first place, the bill was sent over without the provincial seal affixed to it. As a result, the colony's agent declared that the secretary of the Board of Trade told him the board could only consider it "as a piece of of waste paper," and would give no opinion on it until it came in form.[3] According to the agent, other members of the board declared that the success of the bill was dubious because of the encroachments of a neighboring province, and because the practice of limiting the life of Parliament in England to three years had been found to be "prejudicial to the subject by the tumults and expense it occasioned to the candidate for election."[4] Furthermore, the bill was ill-timed because the province at the time was petitioning for stores of war. Considering these things, therefore, it is not surprising that the measure never received the royal sanction.

After waiting in vain for the king's approval of the act, the subject was again brought forward and steps were taken to secure the passage of a similar bill. When, in December, 1727, Lieutenant-Governor Wentworth was informed of the intention of the house in the matter,[5] he said he "was disposed to gratify them in regard to that matter so far as he might with safety," and therefore desired them "to con-

[1] *Provincial Papers*, vol. iv, pp. 117–9, 127, Dec. 14th.
[2] *Ibid.*, vol. iv, p. 126.
[3] *Ibid.*, vol. iv, p. 146, Sept., 1724.
[4] *Ibid.*, vol. iv, p. 146.
[5] *Ibid.*, vol. iv, p. 263.

sider how he might oblige them since there was an act already passed with a saving clause which had been sent home for the royal approbation." A few days later, the representatives expressed themselves in the following language on the subject:[1] "Whereas it is the universal and earnest desire of his Majesty's good subjects . . . to have a triennial choice of assemblymen, which is in itself most reasonable and not only consonant to the use and custom of Great Britain but in effect a compliance with his late Majesty's royal mind, who has in express words by Governor Shute's commission commanded that the laws and ordinances of this province be not repugnant to but as near as may be conformable to the laws and statutes of the kingdom of Great Britain where . . . no Parliament can continue and be longer than three years, therefore voted that an act for a triennial assembly be drawn up and that this assembly shall cease on December the 13th, 1730."

Although such a measure now failed of passage because of the dissolution of the legislature, still the agitation in favor of it did not cease, for soon after the next assembly convened in April, 1728, another bill was brought forward, minus the saving clause, deferring its execution until the king's pleasure was known.[2] This quickly passed both houses and finally received the lieutenant governor's approval. As the saving clause had been expressly omitted, the act went into effect immediately, and, as it did not receive the king's veto, it remained in the statute books until the end of the provincial period.

As New Hampshire at the time the royal government was instituted, and in fact for many years afterwards, was only a small struggling province with very few towns and but

[1] *Provincial Papers*, vol. iv, p. 265, Dec. 21st.

[2] *Ibid.*, vol. iv, pp. 288, 294, 489.

a few thousand people, the amount of business which the General Assembly had to transact was relatively small. Moreover, neither house was large or unwieldly, for the larger of the two numbered but little more than a dozen members for many years. For these reasons, therefore, there was no need of dividing the house into committees to facilitate the transaction of business. Occasionally, however, the representatives did select a committee from among their own number to join a similar committee of the council for some special purpose. As time passed and business increased in volume, these committees were appointed with greater frequency and regularity, until at last there was evolved a regular committee system. These joint committees were always named for some specific purpose.[1] Often committees were appointed for the sole purpose of drawing up bills for the approbation of the legislature. In time of war, or at seasons when the Indians acted suspiciously or in a hostile manner, joint committees were appointed to view the fortifications and report on the necessary repairs; to inspect the frontier towns and garrisons and to consider the necessary measures of defence. Such committees were also appointed to consider ways and means of raising a revenue; to revise the laws, to scrutinize accounts and to audit the claims of those to whom the province was indebted. Then, too, committees of both houses were named to examine muster rolls; to investigate and decide upon petitions; to inquire into the various grants made by the assembly; to draw up tables of fees and to run or regulate parish or town bounds. Committees of this kind were also appointed to draw up instructions for, or carry on correspondence with, the colony's agents in Great Britain; to estimate the cost of certain articles or such work as the assembly de-

[1] *Provincial Papers*, vol. iii, pp. 18, 20, 30, 34, 44, 51, 52, 61, *passim*.

signated; to make suitable provision for the reception and entertainment of a new executive or a distinguished visitor; to take under consideration the subject matter of the governor's messages and to confer with the latter upon matters of special interest or importance. Joint committees were likewise appointed to draw up addresses to his Majesty; to take bonds from various parties in accordance with the provisions of certain acts; to set reasonable prices upon such articles, mentioned in the various supply bills, as might be taken in lieu of money in the payment of taxes and rates; to ascertain the value of money and the rate of exchange; to devise ways and means to prevent the further depreciation of the paper currency and to do many other things and act in a great many other capacities far too numerous and diversified to mention. In fact, these committees grew in importance and became more numerous and frequent as the province increased in population. Upon them devolved much of the laborious detail work before the legislature, and during the later intercolonial wars committees of this kind were particularly powerful, for they practically had the entire management of the various campaigns in their own hands.

As a rule the committees consisted of an equal number of members from each house, but occasionally the lower house insisted upon appointing a majority of the committee and the council was sometimes forced under stress of circumstances to waive its right to equal representation, although it always maintained that it had a right to equal representation on any committee. Then, too, the members of each house alone determined what persons should represent their house on a committee, and when Governor Wentworth in 1744 attempted to invade the privilege of the lower house by refusing to consent to a Mr. Clarkson being on a

certain committee, the representatives vigorously protested and finally won their point, declaring that it was "the undoubted right of this house to appoint any member of the house to any committee so long as he stands legally qualified to sit in the house." [1]

Occasionally, instead of appointing a committee to confer with a like committee of the other house on some matter of importance, one or the other of the two houses would request the executive to call a conference of both branches of the legislature and sometimes the governor would even call a conference on his own initiative. This was usually done when the advice or opinion of the other house was wanted on a certain matter then at issue before the legislature, or for the purpose of more thoroughly discussing a certain subject, or with the view of reaching some agreement on points upon which the houses could not agree, or in order to expedite matters pending before the general assembly. Naturally, the subjects discussed at such conferences covered a very wide field.[2] During the last war with France, the two houses sometimes sat and worked together, at the governor's request, in order to facilitate and expedite the dispatch of business of a very urgent character.

Besides considering business of a purely legislative character the house also took up for consideration such matters as were embraced in the various petitions which were presented to it. At first these petitions were few in number, but with the growth of the province in population and the increase in the number of settlements, they became more numerous. The people began to look more and more to the assembly as the proper body before which their complaints

[1] *Provincial Papers*, vol. v, p. 248.

[2] *Ibid.*, vol. iii, pp. 12, 55, 243, 388, 533, 609, 631, 639, 664, 673, 727, 778, 827; vol. iv, pp. 344, 551, 763, *passim*.

and grievances should be heard. The matters touched upon covered a wide range of subjects and were of varying degrees of importance. Some of them were very trivial in their nature while others were of a more serious character. Sometimes the assembly itself would hear and dispose of the petitions, and, whenever the occasion required it, would summon the parties concerned and hear their testimony. At other times, the petitions would be referred to committees, specially instructed to make investigations into the merits of the particular cases and either report their findings to the assembly or dispose of the matter as they thought would best serve the interests of all concerned.

When the commission for the first executive of New Hampshire passed the seals, it contained a clause authorizing the president, with the council's consent, to continue for the support of the government the taxes and impositions that were then being levied upon the inhabitants, until such time as the general assembly could be convened and devise other ways and means of defraying the expenses of the government.[1] At the time, the insertion of such a clause in the commission was, from the very nature of the case, necessary, as there was no revenue arising for the support of a central government. But when an assembly had been once convened and provision had been made for a revenue, the purpose for which the clause had been inserted was fulfilled and from that moment the question of raising money was one which concerned the entire legislature and not the governor and council alone.

When, a few years later, this form of government gave way to the regular type of royal government and Cranfield became lieutenant governor,[2] the same provision was inserted

[1] *Provincial Papers*, vol. i, p. 379.

[2] *Ibid.*, vol. i, p. 440; vol. xix, p. 690.

in his commission. Undoubtedly this was done in order that there might be no failure of a revenue while the necessary changes were being made in the government, and pending the summoning of the assembly. But Cranfield interpreted it to mean that the governor and council had the right to continue such taxes and impositions whenever the assembly refused to pass such revenue bills as the executive wanted it to pass. Finding that the house would not do his bidding and could not be prevailed upon to approve a revenue bill which he had presented to it for passage, he obtained the council's consent to an order, continuing such taxes and impositions as had formerly been laid upon the people. This method of raising a revenue, however, proved a failure for the inhabitants refused to pay the taxes until the assembly should formally sanction their collection.[1]

From this time on no governor of New Hampshire ever attempted to raise a revenue without the aid and coöperation of the assembly. Thereafter, whenever money was required, the executive always applied to the assembly for the necessary grant.

Although the commission granted to all parts of the legislature equal power in the making of the laws, nevertheless, the members of the lower house looked upon the question of raising money as one well within the province of their house to settle and determine. As the more immediate representatives of the people, they thought they were most vitally interested in and chiefly concerned with the finances of the province. Consequently, they insisted more and more upon determining the amount to be raised, prescribing the manner in which it should be levied and designating the uses to which it should be put.

[1] *Provincial Papers*, vol. i, pp. 498, 490, 543, 544, *passim*.

Governors, too, recognized this right.[1] Thus, in a speech to both houses, Belcher directed the following words in particular to the representatives present: "As it is more immediately your province to look into the state of the public revenue I shall order all the accounts from the last time you had them to be laid before you."[2] Usually throughout his administration he directed his remarks to the members of the lower house whenever they had reference to the question of raising funds, and the same course was also adopted by other governors; but in a speech made to the legislature in 1740, he failed to do so. The representatives took exception to this, saying that they could not but take notice that, though he directed his speech to the council jointly with themselves as to the matter of the treasury, nevertheless, they, the representatives of the people, look upon themselves as the persons "that are more immediately concerned and that are principally and directly to be applied to on that head."[3]

According to the royal instructions, the assembly was permitted to view and examine from time to time the accounts of all moneys disposed of by virtue of such laws as were made by it.[4] The lower house very early availed itself of this privilege. Usually the accounts were laid before the representatives soon after the session began, but, if they were not, the governor was requested to have them brought before the house. Generally the examination would be conducted by a committee of both houses which would present a report for the assembly's approval. But the lower house

[1] *Provincial Papers*, vol. iii, pp. 67, 357, 367, 659; vol. v, pp. 137, 163, 242; vol. vi, pp. 130, 232, 348, *passim*.

[2] *Ibid.*, vol. iv, p. 563.

[3] *Ibid.*, vol. v, p. 19, February, 1739–40.

[4] *Ibid.*, vol. i, p. 443; vol. ii, p. 65.

regarded the matter as one entirely within its own province and sometimes appointed a committee of its own to make the examination. The council, however, objected to this, claiming an equal right to make the examination and join in the investigation of any accounts whatever.[1] In 1722,[2] when the house appointed a committee of its own to examine the treasurer's accounts and the upper house sent down a vote for the usual committee of both houses, the representatives non-concurred the council's vote and passed a resolution to the effect that it was "the undoubted right" of the house to examine and allow the treasurer's accounts. On several other occasions also the representatives expressed themselves in a similar vein.

The examination, to which the accounts were subjected, was generally a very careful one and such additions or deductions were made as would make them conform to the various grants passed by the legislature.

As the treasurer, who was appointed by the governor, was the one through whose hands the provincial funds passed, efforts were made on the part of the house to hold him to a far stricter account than was at first possible. Thus, in 1720 the representatives resolved that all the accounts relative to the province should be sworn to, "to be a just account."[3] The next year the house voted that no more memorials should be received from the treasurer relating to his accounts but that the latter should be brought in, arranged "by debt and credit."[4] In 1724 it expressed itself in favor of having the treasurer give a bond for the faithful performance of his duties,[5] and a little later[6] it provided that no money appropriated to particular uses

[1] *Provincial Papers*, vol. v, p. 757.
[2] *Ibid.*, vol. iv, p. 339.
[3] *Ibid.*, vol. iii, p. 789.
[4] *Ibid.*, vol. iii, p. 836.
[5] *Ibid.*, vol. iv, p. 130.
[6] *Ibid.*, vol. iv, p. 693.

should be drawn out of the treasury for the discharge of any other public debts, upon penalty of the treasurer's refunding such sums as should be paid by him contrary to the appropriations. Soon after Benning Wentworth entered upon the government, the representatives told the treasurer to bring in all his accounts from the time of the last settlement in such a way as to show how the money was applied in accordance with the appropriations of the assembly, for they were determined to receive no other account.[1] As on several former occasions there was also some dispute as to the right of the treasurer to certain commissions to which he claimed he was legitimately entitled. To prevent the like in the future the house now resolved to grant him a regular salary in lieu of the uncertain fees and commissions which hitherto had been the support of the office.[2] As the grant was not a permanent one, however, the treasurer had to depend for his salary upon such temporary grants as the legislature from time to time saw fit to allow him. In time of war, he received an additional sum for the extra services he then rendered.

But aside from this policy of the house to hold the treasurer to a very strict account, there was a tendency to vest the speaker of the house with some of the duties which ordinarily go with the office of treasurer. Thus bonds for various purposes were made out to the speaker and when the persons holding the bonds died the speaker was entrusted with their safe keeping. Then, too, when officers and other people were required to give bonds, the latter, by the assembly's vote, were often required to be given to the speaker.

Nothwithstanding the fact that it was the desire of the

[1] *Provincial Papers*, vol. v, p. 142. [2] *Ibid.*, vol. v, p. 155.

home government that the assembly should make some permanent provision for the support of the government, nevertheless it was impossible to prevail upon that body to set aside a fund for that purpose or pass any revenue bills except such as were of a temporary character. As it was the tendency of the house to make the payment of the salaries of most of the officers of the government dependent upon the passage of annual grants and its fixed policy to provide for the payment of such things only as were essential and necessary at the time, governors were virtually compelled to have frequent sessions of the legislature.

When any money was once brought into the treasury, it could only be taken out again upon presentation of a warrant from the governor, who was strictly commanded, both in his commission and in his instructions, not to suffer it to be disposed of in any other way.[1] This, in a way, made the executive the custodian of the public funds, but the control which he came to possess over them was only nominal. At first the governor was sometimes allowed to use some discretion in connection with the expenditure of some of the money, raised for particular purposes, and this was apt to be the case in time of war; but the tendency was to make the votes more and more specific. Later, committees were appointed to take charge of certain funds in accordance with such orders and instructions as the general assembly saw fit to give them, and the only part which the governor took in disposing of the money was that the committee had to apply to him to issue out his warrants for such sums as it wanted. Beyond the mere issuing of the warrant, however, the governor had nothing to do with the money. During the period when acts for the emission of bills of

[1] *Provincial Papers*, vol. i. pp. 440, 443; vol. ii, p. 310; *Provincial Laws of New Hampshire*, vol. i, pp. 56, 625.

credit were frequently passed, committees of both houses often took entire charge of the emission of the money. Committees were appointed to sign the bills; to receive all defaced and mutilated bills; to make tale of such as were to be re-issued or burned; in fact, committees were named to do everything in connection with the emission and redemption of the paper money. The executive had no power to take a penny out of the treasury without authority from the assembly.

Naturally governors chafed under the restraints thus imposed upon them and remonstrated with the assembly, but it was all to no purpose. Even in very critical periods, when the frontiers were being assailed by the Indians or an invasion seemed imminent, a governor was often unable to render effective aid to the distressed inhabitants or put the province in a proper posture of defense because there was no fund upon which he could, in such an emergency, draw. For the same reason he could not entertain any persons of distinction who visited the province, even in the latter's interest, without first calling upon the assembly to provide the means for their entertainment. In fact he could do nothing which required money for its accomplishment without authority from the legislature. Occasionally, in cases which he considered urgent, he did, with the council's consent, authorize certain things to be done, and in a few instances even advanced the necessary funds, relying, of course, upon the legislature to pay for what had been done; but nothing on any very large scale could be undertaken, requiring the expenditure of much money to carry it out, without calling the assembly to provide the necessary funds, inasmuch as the assembly steadily refused to set aside any money that could be drawn upon in just such emergencies.

Against the appointment of committees to take charge of public money and to do other work and against other en-

croachments of the assembly, the Board of Trade in 1752 vigorously protested. Having observed in the acts, passed to further the Louisburg and Canada expeditions, sundry infringements of the royal prerogative,[1] their lordships called the governor's attention to the fact that the assembly's action in appointing committees, in their several acts, to dispose of the money to be raised and to conduct the services to which it was applicable, involved "certainly a great encroachment upon his Majesty's prerogative." For this reason they insisted in the most emphatic manner that for the future the governor should strictly adhere to his instructions and not deviate from them in any point, because the passage of laws that are inconsistent with the royal instructions "is manifestly of great injury to the public service and the occasion of many difficulties inasmuch as those laws, though they contain the most salutary provisions, cannot receive the royal approbation but by his Majesty's dispensing with his instructions."

Accordingly in April, 1755, after an act, similar to the ones complained of, had passed both houses, the governor informed the representatives, that it contained several clauses in direct opposition to the commands he had received in their lordships' letter, the most important parts of which he then laid before them.[2] He then expressed the hope that the houses would unite in measures to put the intended expedition upon such a footing that he might conduct it with honor to himself and safety to those who should engage in it, and, to this end, he advised that, if they thought, after what he had laid before them, it was their province to appoint committees, the latter should be directed in the act to conform to his orders in providing such necessaries as the

[1] *Provincial Papers*, vol. vi, p. 370. June 23, 1752.

[2] *Ibid.*, vol. vi, p. 369.

expedition might demand. But, neither the governor's words nor the Board's letter produced the slightest change in the attitude of the house on the subject, for that body not only refused to make the desired changes but even asserted that the act contained nothing inconsistent with the royal instructions.[1] Furthermore, it said that inasmuch as the committee of war was to procure all the necessaries for the expedition and deliver them to the governor's order, the latter would be able to conduct the expedition with honor to himself and safety to those engaged in it. Consequently it refused to make the alterations desired. The action of the house left the governor now in a very peculiar position, and the only course which seemed open to him, in view of the Board's express instructions, was to veto the bill; but to do that, just at this moment, was almost beyond the question, for should the expedition meet with failure when New Hamphire was not represented in it, the other colonies would naturally put the blame upon that province, while the king would probably be incensed at the governor for having allowed his instructions to defeat, at so critical a stage, an expedition, the success of which meant so much to all concerned. Under such circumstances, therefore, the governor signed the bill as it was, thus ensuring the success of the expedition so far, at least, as it was in his power to do so.[2]

On another occasion, in 1761, when a bill for the emission of paper money was before the governor, the latter made the following speech in regard to it.[3] "I am astonished," said he, "at your pressing me to assent to the bill before me when it is so repugnant to the laws of Great Britain, the only standard I am to measure all laws by that I assent to . . . When you critically consider the bill, you will find

[1] *Provincial Papers*, vol. vi, p. 371.

[2] *Ibid.*, vol. vi, p. 376.

[3] *Ibid.*, vol. vi, p. 785.

that it repeals a law now in being, that it militates with your constitution, that it supersedes officers in power, that it is a great indignity to the king, that it is derogatory of the liberties and privileges of his Majesty's subjects, that in fine, if you would drive me to the necessity of assenting to it or that his Majesty's service must suffer, it may be a means of debarring the province of the recompense you might otherwise have merited." In reply[1] the house said that it was agreeable to the constant practice of the government and was "drafted on the same plan as several others passed during the present war." It failed to say, however, that the bills it referred to were signed by the governor practically under compulsion. As it refused to amend the bill, the governor, under stress of circumstances, was compelled to give the measure his assent.

It was by adopting such a policy as this, at just such crises that the house was enabled to make such encroachments upon the prerogative. At such times as these, the governor was practically at the house's mercy. Thus on several occasions when the governor was expressly forbidden to give his assent to a bill for the further emission of paper money, the house made the necessary arrangements for a campaign contingent upon the emission of bills of credit, and refused to withdraw from that position, no matter what pressure was brought to bear upon it. In a few cases, in order to protect himself from the royal displeasure, the governor, before affixing his signature to the bill, insisted upon the house appointing a committee to write home to excuse him for violating his instructions.[2]

When the occasion would allow, governors were often wont to keep such assemblies sitting or under short adjourn-

[1] *Provincial Papers*, vol. vi, pp. 785,786.

[2] *Ibid.*, vol. v, pp. 243, 336, *passim*.

ments in the hope of making them withdraw the clauses to which objection was made and, at times, even dissolution was resorted to in expectation that a new assembly might be convened which would pass revenue bills, the provisions of which would not infringe upon the prerogative. But these methods, as a rule, were not successful. During the administration of Governor Belcher several assemblies were dissolved because they refused to agree upon a supply bill which the governor and council could sanction. Although during that period the assemblies were kept sitting beyond the time usually allowed for the transaction of business, the house would not yield and it was only after five assemblies had been dissolved, and six years had passed by that a satisfactory bill was passed which received the approval of both governor and council.

Then, too, in order to force the governor or council to assent to measures they did not approve, the house would sometimes refuse to do certain things until those measures were acted upon. Thus, for example, in 1742,[1] the house sent up word that it could not make a supply bill until the council had acted upon a certain grant. In 1745[2] the house sent a committee to the governor to say that if he would consent to put off until 1760 the payment of the money then to be emitted the representatives would vote two hundred additional volunteers. Otherwise, a grant for only one hundred more would be passed. Again, in 1747,[3] the house determined unanimously not to act further on the affair of loaning money to the king until provision was made for paying off the just debts of the government contracted in defending the frontiers the year before. In 1756,[4] the house declared itself ready to pass a bill borrowing £6000

[1] 1741–2.
[2] *Provincial Papers*, vol. v, p. 290.
[3] *Ibid.*, vol. v, p. 558.
[4] *Ibid.*, vol. vi, p. 518.

sterling as soon as a certain act then before the governor was signed and not before.[1] Five years later, the house declined to act on the governor's message until the money bill for paying the troops was assented to.[2] The following month, when Governor Wentworth objected to certain features of an act for granting the king a certain sum of money,[3] the representatives would not make the changes recommended and refused even to send up the muster rolls which the governor wanted until the latter had given his assent to the act in question. In 1765 the house said it could not with any propriety proceed to the making of a supply bill or any grant for the discharge of the province debts until it had the governor's determination on two bills that were before him.[4] Repeatedly during the controversy over the question of dividing the province into counties the representatives declared that they would not grant a salary to the chief justice and his associates until a bill for the division of the province into counties was approved, and at last in 1768 they even refused to pass a supply bill until the grievance about the counties had been removed.[5]

Then again, in 1746, when the governor requested the house to pay for one hundred and eighty barrels of powder that had been sent over, at the colony's expense, along with some cannon and other arms which the crown had presented to the colony,[6] the representatives resolved not to pay for the powder, unless it was placed at the disposal of the general assembly and not left with the governor, to be disposed of as he thought best.

As for the supply bills which were passed to defray the

[1] *Provincial Papers*, vol. vi, p. 518. [2] *Ibid.*, vol. vi, p. 777, 1761.
[3] *Ibid.*, vol. vi, pp. 770, 781. [4] *Ibid.*, vol. vii, p. 74.
[5] *Ibid.*, vol. vi, pp. 343, 750; vol. vii, p. 182, *passim*.
[6] *Ibid.*, vol. v, p. 424 *et seq.*

current expenses of the government and to discharge the province debts, the tendency was to have them drawn up more carefully and in greater detail. The result was that many of them resembled mere itemized accounts in which every person that was to receive money was named and every penny that was to be paid out was fully accounted for. The governor had absolutely no discretion in the disposal of the amount granted, his only duty being to issue his warrants for the amounts named in the bills.

It is thus evident that the house, which from the beginning regarded the question of the colony's finances as one in which it was chiefly interested and concerned, so increased its power in this direction as to become the controlling factor in the financial affairs of the colony, constantly compelling both the council and the governor to yield under pressure to its demands. As the struggle between the various branches of the legislature over their respective powers in financial matters had not ceased at the time the provincial government was overthrown, it is difficult to say what the actual result of the conflict would have been, had the province remained under the control of Great Britain.

In the domain of military affairs the lower house made perhaps greater inroads upon the prerogative than in any other. Notwithstanding the fact that the governor, as the executive head of the province, was clothed by his commission with as ample authority as any captain-general ever possessed, still he was never able even in the beginning to exert that authority to any very great extent. Naturally several causes contributed to this condition of affairs but the chief reason is to be found in the fact that the assembly controlled the purse. The governor might levy forces, command troops and issue orders, but without the necessary funds no campaigns could be made, no expeditions undertaken, no fortifications built,—in fact nothing of any import-

ance in the military line could be done without money. But aside from the control of the purse, the conditions under which New Hampshire developed, the influence which the more democratic government of Massachusetts exerted in the province and the inborn fear which as Englishmen they had of military despotism must all be borne carefully in mind in considering this subject.

During the early years of the provincial period, governors were allowed at times considerable latitude as to the disposition of the forces and the management of the campaigns, and this was especially true during the administration of Governor Dudley; but the tendency from the beginning was for the house to assume a more and more important part in the management of military affairs. It began to designate the number of men to be employed, to specify the length of time they might be used and to fix the rate of their compensation. Then, too, the house in its votes often mentioned the kind of service the men were to render, the places they were to visit and the time they were to spend in each. In some cases even the amount of ammunition each was to be allowed was designated. It was left, of course, for the governor to issue the necessary orders for raising the troops and to see that the votes of the assembly were faithfully executed. Usually it was for him to say how many of the number granted were needed for the service required and for what time within the limit of the grant the men were to serve.

Although in time of danger and in cases of emergency a governor would, upon the council's advice, order men to be enlisted or impressed for the defense of some exposed district, and would, as commander-in-chief, issue such orders as were necessary, still he had to exercise great care whenever he did so, for, as he could not use the provincial funds for such purposes without the assembly's consent, he

was dependent upon the latter for support and it was never certain that the assembly would approve his course and provide pay for the troops. Usually the governor's action was approved, but there were instances when men ordered out by the executive were refused compensation by the legislature. From the attitude which the house assumed in such cases, it would appear that the governor was only justified in granting such aid as, in the opinion of the representatives, was really necessary to meet the emergency until the legislature had time to meet and act. Several times governors attempted to have a special fund set aside by the legislature to meet such emergencies but their efforts in this direction were unsuccessful, for in all such matters the house desired to be consulted. The consequence was that governors were virtually compelled to summon assemblies whenever the frontiers were threatened and assistance needed.

It was also the policy of the house to hold the governor to a very strict account in carrying out its votes and resolutions, and, as a result, executives were compelled to exercise the greatest vigilance and care. Thus in June, 1745, when certain men were kept in service beyond the time set in the various grants, the house protested against it and, although it resolved to pay the men because they had been impressed and it would therefore be a hardship to keep them out of their money, nevertheless, it declared [1] that the present case "should not be deemed or urged as a precedent for this government's paying any men that may thereafter at any time be kept out on any occasion contrary to or without grant of the general assembly." And again in January, 1756, the muster roll of James Neal, which amounted to more than the grant provided for, was ordered corrected and brought within the sum allowed for the thirty days men-

[1] *Provincial Papers*, vol. v, p. 352.

tioned in the assembly's grant;[1] but a few days later, after considering the circumstances of the case, the account was allowed.

The inability of the governor to use the provincial funds for military purposes without the assembly's consent effectually prevented him from exercising the most important military powers with which the commission invested him. Without the assistance of the assembly nothing of importance in the military line could be accomplished. Thus, in 1754, in consequence of the mischief done in particular by the Indians at Stevenstown, the governor was advised by the council to enlist as many men as he thought were necessary.[2] Although he immediately sent a cavalry detachment to the place and issued orders for the enlistment or impressment of fifty foot-soldiers, he had some doubts whether the latter could be prevailed upon to march, as it was not within his power "to engage pay and substance for the men for want of a proper fund in the treasury" for that purpose. Accordingly, he immediately convened the legislature in special session to consider the matter. How powerless he was to render effective assistance is well brought out in his message to the assembled delegates.

As captain-general, said he, I am invested with power to assemble the military force within my government upon many occasions, but neither horse nor foot can be sent under arms more than twenty-four hours or perform remote marches unless they are paid and subsisted. I have not been wanting in my duty in a point so essential to the well-being of all governments to press the assembly from time to time to make this salutary provision for the defence and safety of the frontiers by placing requisite sums of money in the treasury to be used

[1] *Provincial Papers*, vol. vi, pp. 455, 458, 459.

[2] *Ibid.*, vol. vi, p. 27.

only in emergencies and unforeseen exigencies, but hitherto I have not succeeded therein, which makes a great defect in the administration of government. In this season [midsummer] I am under a necessity of convening the members of the general assembly at this unseasonable time, and to call upon you for advice and assistance in what manner I shall afford protection to the exposed frontiers, both with respect to the number of troops and the method of paying and subsisting them.[1]

As a result of the meeting,[2] the houses agreed that sixty men should be enlisted and paid for a period not exceeding two months, but they took no action with regard to setting aside a fund from which troops could be supported in cases of emergency.

The aid granted, however, proved to be entirely inadequate, for the trouble with the Indians was far more serious than had been anticipated. The area of their depredations having greatly increased, the entire frontier was soon in a state of the greatest terror and alarm. At this juncture, the council, finding that there was no money in the treasury except what was appropriated to particular purposes and that without money for the soldiers' subsistence, the latter could not be impressed, advised the governor to assemble the delegates again in order that their advice and assistance might be had. This being done, the legislature agreed to a further grant of fifty men to be enlisted or impressed for a period not exceeding six weeks. Although the danger had not entirely passed at the end of that period, the governor wrote to Col. Blanchard, who was in command of the men, to dismiss them, unless they were willing to remain at the mercy of the assembly which he could not

[1] *Provincial Papers*, vol. vi, pp. 296, 297.

[2] *Ibid.*, vol. vi, p. 298.

advise them to do.[1] Many, however, did remain beyond the time expressed in the grants, but when the legislature met they found they were allowed nothing for the extra days they served, and even the ammunition they used beyond the amount allowed by the assembly in the grant had to be paid for out of their own pockets. At the request of Col. Blanchard, Governor Wentworth interposed in behalf of the men, declaring that an instance of the like kind could not be produced from the records of Parliament, but his endeavors in their behalf were unavailing.[2]

The next year Wentworth was again compelled to summon an assembly to consider the commands and recommendations of General Johnson relative to the Crown Point expedition, because "the essential things to be done, depended on grants to be made by the general assembly."[3] Then again in August, 1756, upon being acquainted with the contents of Lord Loudon's letter,[4] requesting immediate assistance, the council advised the governor to enlist or impress two companies but not to begin the levies till the assembly had been consulted, "inasmuch as the expense that will attend the said levies and transportation of the men when raised cannot be defrayed without they make provision therefor." Three years later, upon receiving word that General Amherst desired 1000 men, the governor asked the council what he should do in the matter and was advised not to attempt to raise such a number as the legislature had made provision for but eight hundred.[5]

Besides designating the number, fixing the pay, and providing for the disposition of the forces, the assembly also

[1] *Provincial Papers*, vol. vi, pp. 28, 300, 301, 319.

[2] *Ibid.*, vol. vi, pp. 340, 341, 343.

[3] June, 1755. *Provincial Papers*, vol. vi, pp. 30, 386.

[4] *Ibid.*, vol. vi, p. 33.

[5] *Ibid.*, vol. vi, p. 621, June, 1759.

asserted the right to examine the muster rolls and later insisted that they be laid before both houses for approval. Usually the work of scrutinizing the rolls devolved upon a committee of the two houses, which made such changes and deductions as were agreeable to the votes previously passed by the legislature. This method of procedure prevented the men from being paid as promptly as they otherwise would have been and sometimes resulted in their being kept out of their just dues for a long time, for, until the rolls had passed all branches of the legislature, no one could be paid. This was really a hardship for the men, for it was but proper that when the services had been rendered, their wages should be paid. Frequently it happened that the assembly did not meet until some time after the men were mustered out of service, and occasionally there would be some dispute with the governor which would greatly retard the work. Though the latter vigorously protested against such delays, it was in vain.

During King George's War, the lower house began to insist also upon having a voice in the appointment of the commissaries, physicians and surgeons who accompanied the various expeditions. When in March, 1745, the house passed a vote empowering the committee in charge of the expedition against Louisburg to appoint a commissary to go with the provincial forces, both the governor and the council asserted that neither the upper nor the lower house had anything to do with the appointment of such an officer, inasmuch as that power was vested in the governor only. Nevertheless Governor Wentworth declared that, if the house or the committee would select a person for the position, he would in the present case grant him a warrant. The following autumn the house passed a resolve to have the commissary appointed by the general assembly and named Mr. Sheaf for the place, at the same time stipulating not

only that he should be under such orders and directions as the committee in charge of the expedition should see fit to give him but that he should also render to the general assembly from time to time an account of his proceedings. To this vote the governor, constrained by circumstances, reluctantly assented, but only after ordering a minute to be made in the council book to the effect that his assenting to the appointment of a commissary by the general assembly "should not be pleaded as a precedent in the future."[1] This failed, however, to produce the effect desired, for when a special convention was called the following year to make arrangements for raising and maintaining troops, the representatives inserted provisions in the bill for the appointment by the general assembly not only of a commissary but of a chaplain and a surgeon also. Although the governor strenuously objected to these encroachments, the house would only yield on the question of the appointment of the surgeon and chaplain, insisting to the last upon having a voice in the appointment of the commissary. Realizing, however, that his veto might only serve to defeat the king's well-laid plans, he deemed it his duty to approve the bill as it then stood.[2] And, again, during the last inter-colonial war, the house incorporated similar provisions, respecting the appointment of a commissary, a surgeon and a chaplain by the assembly, in the bills which provided for the enlistment and support of the troops then needed, and, as in the cases just cited, it insisted upon the governor accepting them all and regularly forced him to comply by doggedly refusing to pass the bills unless the provisions to which he objected were included.[3]

[1] *Provincial Papers*, vol. v, pp. 299, 300, 384, 776.

[2] *Ibid.*, vol. v, pp. 432, 433, 438, 443, 819, 821.

[3] *Ibid.*, vol. vi, pp. 369, 370, 371, 509, 511, 512, 513, 515, 521, 574, 671, *passim*.

The dispatch, too, of soldiers beyond the bounds of the province was always looked upon with disfavor by the assembly, which in several instances protested against it, notwithstanding the fact that the governor's commission empowered him to transfer men to any of the other colonies whenever the latter's defense required it.[1] And on one occasion the house absolutely refused to make any provision for the maintenance of some men who had been ordered impressed by Governor Shute to take part in an expedition against the Indians in Maine. During the last French war the house was inclined to designate the territory within which the troops might be employed. For example, in 1756, the troops could not be employed south of Albany or west of Schenectady.[2] Against this practice not only did the English generals in America protest, but the authorities in England also. Thus in February, 1757, when William Pitt, the king's secretary of state, dispatched a circular letter to the governors of the different provinces, he referred to the matter of limiting the field of operations, saying the king desired that the troops should "act in such parts as the Earl of Loudon or the commander-in-chief . . . for the time being shall judge most conducive to the service in general." Furthermore, he hoped that they "would exert themselves to the utmost to strengthen the offensive operations against the French" and not "clog the enlistments of the men or the raising of the money for their pay, etc., with such limitations as have been found to render their service difficult and inefficient." [3]

By the terms of his commission, the governor was empowered, with the advice and consent of the council, to build, maintain and repair such fortifications as were deemed

[1] *Ibid.*, vol. i, p. 438. [2] *Ibid.*, vol. vi, p. 506.

[3] *Provincial Papers*, vol. vi, p. 596.

necessary, but in practice he found it impossible to exercise this right without money.[1] And for this he was dependent upon the assembly, which rarely did anything in this line except what would answer the immediate demands of the moment. The result was that the province never had any forts or fortifications of any great strength and even Fort William and Mary, the one fort that protected the province from an attack from the sea was, during the greater part of the provincial period, in such a wretched condition and in so defenseless a state that it would have easily fallen a prey to the French, had they made a sudden assault upon the place.

It is thus clear that the encroachments of the assembly upon the governor's powers in the domain of military affairs were very great. In the conduct and management of the various campaigns, the house came to play by far the most important rôle, being able to force its will upon both governor and council. The result was that the governor was quite powerless to act or do anything of importance in the military line without consulting the assembly, which at last actually exercised the important military powers that the commission vested solely in the executive and the king intended the latter should exercise.

Encroachments were also made by the legislature upon the governor's power of appointment. For instance, when the governor declared his intention of appointing persons, either to accompany him on some mission pertaining to peace or war, or to act as commissioners for the province at such conferences as were called to discuss or devise plans and measures for the effective prosecution of a campaign, or with a view to secure and cement peace, the house would

[1] *Provincial Papers, e. g.*, vol. i, p. 439; *Laws of New Hampshire*, vol. i, pp. 53, 506, 616.

often assert the right to have a voice in the appointment of the commissioners.

During the early part of the provincial period, the appointment of such commissioners by the governor does not appear to have been questioned by the assembly. Sometimes they would be named without consulting the house, while at other times the latter would be consulted in the matter and even requested to name one or more of the commissioners. Later, however, the house claimed the right to have a voice in the appointment and was able in many cases to enforce its claim. And this it was able to do because there were no funds in the treasury which the governor could use to pay the expenses of the commissioners. Consequently, if it was expedient or necessary to send commissioners any distance or upon any mission necessitating the expenditure of much money, no matter how important it might be, the governor had to have the assurance of the assembly that the bills would be paid.[1] But the house not only claimed the right to have a share in the appointment, but it sometimes limited the commissioners' powers so that they could act only in accordance with such instructions as were received from the assembly. In some cases, they were required to present the report of their proceedings to the assembly and not to the governor only.

But these were not the only attempts made to encroach on the governor's power of appointment. The cases of the commissaries, the chaplains and the surgeons who accompanied the troops in the various campaigns have already been cited and the manner in which the house gained its point has been sufficiently explained. In 1743 the house also insisted upon sharing with the governor the right to

[1] *Provincial Papers*, vol. iv, pp. 458, 459; vol. v, pp. 112, 425, 516, 518, 809; vol. vi, pp. 11, 235, 273, 281, 283, 485, 637, 649, *passim*.

appoint a truckmaster. The Indians having asked the governor to establish a truck-house "where they might have such supply as was necessary for their furs," he laid the matter before the house, but that body informed him that it would not make any supply for that trade unless it had a voice in the appointment of the truck-master. Thereupon, the governor told the members that they seemed absolutely determined either to force him to give up the prerogative or prevent the supply he promised. The former, he then assured them, he did not dare give up. Consequently, if they prevented him from keeping his engagements with the Indians, they alone would be answerable for the ill-consequences that might ensue. Thereupon the house voted to let the matter lie for further consideration. As a result nothing further was done.[1]

During the same decade, the representatives also attempted to have the right of appointing the recorder of the province vested in their house on the ground that the people whom they represented were the "persons chiefly concerned in interest and property."[2] But in the contest that ensued, the governor and council remained firm, with the result that the recorder was appointed as in the past by the entire legislature.

In the same way, the representatives insisted upon the appointment, by the legislature, of committees upon whom devolved most of the duties which really belonged to the governor by virtue of his position as commander-in-chief of the provincial forces. How important some of these committees were is to be seen from the duties they had to perform. For instance,[3] in 1746 one of the several committees

[1] *Provincial Papers*, vol. vi, pp. 221, 225, 227.

[2] *Ibid.*, vol. v, pp. 177, 195, 205, *passim*.

[3] *Ibid.*, vol. v, p. 433.

appointed that year was empowered to provide and fit out transports and other vessels for the troops, procure arms, provisions, clothing and whatever else was necessary for promoting the expedition and do and transact every affair proper for a committee to do in relation to the undertaking. Even the bills of credit to be emitted were to be paid to the committee by a warrant from the governor whenever money was needed to carry out the assembly's instructions. Furthermore the committee was made responsible for the proper performance of its duties, not to the governor but to the general assembly, and it was in accordance with the votes and resolutions of the latter that they were to act.[1]

During the last French war, when the men were engaged beyond the frontiers of the province, it was usual to have a a committee, composed of members of the assembly, repair to some place such as Albany to transact on behalf of the province whatever business was necessary in connection with the expedition, agreeable to such instructions as were received from the assembly.[2]

Although the royal commission vested in the governor full power and authority to establish such courts of judicature and public justice as he and the council should think fit and necessary,[3] nevertheless, the lower house claimed from the very beginning the right to coöperate with the other branches of the government in the establishment and regulation of the courts, and throughout the colonial period the representatives stoutly maintained that courts could only be constituted legally by an act of the entire legislature.

[1] For similar committees *vide*, *Provincial Papers*, vol. v, p. 813; vol. vi, pp. 360, 507, 573, *passim*.

[2] *Ibid.*, vol. vi, pp. 508, 522, *passim*.

[3] *Ibid.*, vol. i, pp. 376, 437; *Provincial Laws of New Hampshire*, pp. 50, 505, 615.

This was the view of President Cutt and the council at the time the provincial government was instituted, for the first assembly ever summoned in the colony passed an act [1] providing for the establishment and regulation of the various courts. This law, however, was afterwards disallowed by the Crown. A little later courts were erected by order of Lieutenant-Governor Cranfield. When this was done, the assembly declared the executive had no such power and shortly afterwards peremptorily insisted upon nominating judges and appointing courts itself.[2] The matter was also viewed with alarm throughout the province and caused considerable uneasiness among the inhabitants who, from having lived so many years under the commonwealth government of Massachusetts, had been accustomed to see such matters, wherein they were all so vitally interested, settled by their own representatives. The feeling was that the executive was usurping power. Accordingly, when a petition was presented to the king against Cranfield there was included, among other charges, this one, that he had erected courts without the advice or concurrence of the assembly.[3] Later Cranfield himself admitted that the people seriously disputed his right to organize the courts, for, when called upon to draw up his answer to the charges preferred against him, he declared that he was "bound in modesty and duty" both to the king and to the Board of Trade to suspend executions in both Mason's and his own concerns until such time as the Crown should settle the question concerning the legality of the courts, inasmuch as the majority of the inhabitants were still of the opinion that the assembly ought

[1] *Provincial Papers*, vol. i, pp. 395, 408; *Cal. State Papers*, 1681–5, § 467.

[2] *Provincial Papers*, vol. i, p. 493.

[3] *Ibid.*, vol. i, pp. 515, 547, 556.

to be joined with him in constituting them.[1] During the administrations of Dudley and Andros which followed, the courts were constituted by the executive upon the advice and with the consent of the council.[2] But with the restoration of the regular type of royal government under Usher, the assembly again asserted the right to join with the governor and council in the establishment of the courts. Then the creation and organization of the several courts were provided for in an act passed by the general assembly, and thereafter whatever changes there were in the courts were made by a regular act of the legislature.[3] The days on which the courts were to be held, the towns in which they were to sit, the jurisdiction of the various tribunals, the qualifications of the jurors and the regulation of most of the fees—all these things were determined by legislative enactment. At the time the province was divided into counties the lower house insisted upon sharing with the other branches of the legislature the right to regulate and establish the courts in the various counties, and finally made the governor and council yield on that issue.[4] The appointment of the judges, however, remained as before in the hands of the governor, but, that there was a growing disposition to have the tenure of their office made more secure, is evident from the message sent to the executive in 1769 wherein the hope is expressed that his Majesty, upon approving the act, would permit the judges' commissions to be made out in the same form as to their continuance in force as the commissions of the judges in Westminster Hall.[5]

[1] *Provincial Papers*, vol. i, p. 547.

[2] *Ibid.*, vol. i, p. 594; vol. ii, p. 17.

[3] *Ibid.*, vol. iii, p. 183.

[4] *Ibid.*, vol. vii, pp. 144, 155, 162, 214, *et seq.*

[5] *Ibid.*, vol. vii, p. 230.

Although other instances might be cited where the lower house either encroached or attempted to encroach upon the prerogative, it is clear, from what has already been presented, that the representatives had greatly increased the powers and importance of their house at the expense of the other parts of the legislature, and these encroachments were in the main made possible through the control which the lower house exercised over the purse. The result was that the position of the executive was materially weakened and the system of two houses with co-ordinate powers, as originally intended by the king and still theoretically maintained in the royal commissions, was in reality destroyed. Although it is highly probable that the lower house would have made still further inroads upon the various powers of the governor and council, had not the Revolution broken out and swept away the royal government, it is impossible to say how successful it would have been in still further pursuing that policy, and it is simply useless to speculate thereon.

CHAPTER IV

The Land System

During the provincial period titles to land in the greater part of what was regarded by New Hampshire as her territory were uncertain and open to question for a great many years. This was due partly to the claims which Mason had upon the province and partly to the disputes over boundary lines which arose between New Hampshire and the neighboring provinces of Massachusetts and New York as a result of the indefinite descriptions of the same contained in the royal commissions issued to the governors of the three provinces. As in the past, Mason's title was a disturbing factor and remained a potent element in the affairs of the province throughout the entire period. In 1740 the long-standing dispute with Massachusetts was finally decided by the king adversely to the pretensions of that province, but this settlement only served to open up a controversy with New York which continued, so far as the province was directly concerned, until 1764, when the dispute over the western boundary was determined in favor of New York.

In the commission which was issued to President Cutt in 1679 Mason's claims received special consideration.[1] It was stated that, in order to prevent any unreasonable demands being made by Mason in consequence of the decision of the English judges upholding the validity of his title

[1] *Provincial Papers*, vol. i, pp. 373, 381, 420.

to the province, the king had "obliged" him to agree not to demand any rent for the time prior to June 12th last past nor molest any in the possession of what they then had but to grant them full titles for all the improved land which they held in consideration of the payment, from that date, of an annual rent of 6d. in the pound on the value of the land and buildings. As for the unimproved land, that was to be retained by Mason to be disposed of as he thought best. In case, however, any should refuse to agree to these terms the president and council were empowered to interfere and effect, if possible, a settlement. And, if an agreement could not be reached, they were to send such cases to England "fairly and impartially stated," together with their own opinion of the merits of each, that the matter might there be determined according to equity.

Soon after his arrival in New Hampshire, Mason found that the people were by no means inclined to accept the terms mentioned, reasonable as they may have appeared both to him and the king. In fact, with the view of negativing his claim, in part at least, the assembly passed a law confirming all town grants and other grants of land within the province. Moreover, provision was made that all disputes involving titles to land should be tried by juries elected by the freemen of the various towns, and it was stipulated that the entire legislature should act as a court of appeal.[1] Furthermore, in an address which was sent to the king in the summer of 1680, the inhabitants were represented as being quiet under the shadow of his Majesty's protection, fearing no disturbance except from some "pretended" claimants to the soil whom they trusted his Majesty's clemency and equity would guard them against.

[1] *Provincial Papers*, vol. i, pp. 395, 396, 403, *passim; Laws of New Hampshire*, vol. i, pp. 38, 40, 42, 43.

When, too, they considered that they had purchased their lands from the heathen—the natural proprietors thereof—that they had long remained in quiet possession, uninterrupted by any legal claim, and that they had defended the same against the savages at their own cost and with their own lives, they were encouraged, they said, to hope that they would be maintained in the free enjoyment of those lands, without being tenants to those who could show no such title thereto. Finally, they humbly suggested whether the practice of allowing appeals to the king in council, as prescribed in the royal commission, might not be used by malignant spirits for the purpose of obstructing justice among them.[1] Then again almost a year later, the president and council informed the king that their chief difficulty was with Mr. Mason's pretensions to the proprietorship of the lands of the province. Although some countenance, they said, was given to his claim in the commission, they could not but think that it had been obtained "by indirect means and untrue information," in which he abounded Moreover, they declared that the latter's statement that Captain Mason had spent great sums in the province, was "mostly if not entirely pretense," for most of the money "was spent in Maine . . . and for carrying on an Indian trade in Laconia, in all of which his grandfather was but a partner." Furthermore, the captain was not expelled from the place but deserted it "many years before Massachusetts was concerned therewith or had extended their line, so far" north. Such, they continued, was the "affecting cry" of the poor, distressed inhabitants that the latter believed their only hope was in his Majesty's goodness, mercy, and equity. They, therefore, craved leave to speak for themselves, not doubting that they would be found loyal

[1] *Provincial Papers*, vol. i, pp. 410, 412.

subjects and lawful proprietors of the lands they possessed. Since, they said, the king did not absolutely command them to own Mason as proprietor, they hoped they would not be counted as offenders for their "slowness" to become tenants to any subject—a thing which bore so ill among them in that vast wilderness whither their fathers had transported themselves in hope of better things.[1]

Richard Martin, a member of the council and a strong opponent of Mason's claims, is reported to have said that neither the king nor Mason had any more right to land in New England than Robin Hood, and that the council was determined to oppose him.[2] Notwithstanding the fact, however, that the council was against him, Mason declared to the inhabitants his right and expressed a willingness not only to confirm their titles but to grant them more land if they desired it. He also made the same offer to every member of the council individually. President Cutt accepted it and through his influence Mason declared that one-half of the inhabitants came to him to have their lands confirmed, but soon afterwards, the president died and Richard Waldron, his deputy, succeeded to the office. Judging from what Mason and those friendly to his interests say, the leaders of the opposition were Waldron, Martin and Rev. Joshua Moody, the minister whom Chamberlain, the secretary of the province, said wielded such extraordinary influence that he was virtually a member of the council and their archbishop. These men and others urged the people not to make any agreements with the proprietor. Sermons, too, were preached against it, and some were upbraided or threatened for acknowledging the proprietor's title, while the members of the

[1] *Calendar of State Papers*, 1681–5, § 124; *New Hampshire State Papers*, vol. xvii, p. 522.

[2] *Calendar of State Papers*, 1681–5, §§ 69, 292.

council, it is said, went from house to house in the towns in which they lived, calling upon the people to oppose his pretensions. From the evidence at hand it appears that the opposition to Mason was general, extending throughout the province, and that only a few took leases of him. The notices which were issued forbidding the people to cut firewood or timber except after obtaining a license from the proprietor were disregarded. At last, to bring the matter, as he said, to a head, Mason summoned Waldron and the other leaders of the opposition to appear personally or by attorney before the king in council within three months, to set out their titles to the lands they possessed, in default whereof he intended to implore the king for a final judgment in his favor. Thereupon, the council issued a warrant for his apprehension but before it was served, he left the country.[1]

Having found by experience that it was impossible to assert successfully his territorial claims when the government was hostile to him and he possessed no governmental rights with which to enforce them, Mason, upon his arrival in England, bent every effort to procure the establishment of a government in New Hampshire more favorable to his views. To further that object he surrendered to the Crown all the fines and forfeitures and one-fifth of the quit-rents and other revenues to which he was entitled as proprietor. His friends, too, and the discontented few in the province were also doing what they could to bring about a change. Officials in England, also, viewed with disfavor the proceedings of the president and council, while the Lords of Trade were highly displeased with the way in which the govern-

[1] *Calendar of State Papers*, 1681–5, §§ 107, 288, 997; *Prince Society Publications*, vol. xii, p. 112 *et seq.*; *Provincial Papers*, vol. i, pp. 423, 429; vol. xvii, p. 560 *et seq.*

ment was administered. They recommended that all the laws which had been passed by the assembly should be disallowed and advised the king to send over a person to settle the country in accordance with such commission and instructions as were usually granted to royal governors. The result was that Edward Cranfield was appointed chief executive of the province.[1]

In his commission the provisions respecting Mason's claims were in substance the same as those contained in the commission issued to President Cutt in 1679.[2] To provide for the governor's more ample support, and to secure, we may believe, his interest, Mason mortgaged to him the entire province for twenty-one years as security for the payment of £150 annually for seven years. On December 1, 1682, less than two months after his arrival, Cranfield wrote a letter to the Lords of Trade in which he said that Mason had much misrepresented the whole matter, the place not being "so considerable nor the people so humored" as he reported. There were but four towns in the entire province, he said, all of which had been greatly impoverished by the late war and were in debt on that account to this very day. As for the people, they were very loyal to the king and respectful to himself and willing to do what they could in support of the government, but unable to do as much as had been pretended. Far however from being ready to admit Mason as their proprietor, they were very slow to admit of anyone but the king, so that only a few, so far as he could learn, were willing to comply with his terms, the general desire of the people being for a determination of the case by law. The course, therefore, which Mason had been pursuing was not, in his judgment, the

[1] *Laws of New Hampshire*, vol. i, p. 45.

[2] *Provincial Papers*, vol. i, p. 441.

proper one, for it failed absolutely to produce the result desired. Had the proprietor instead asked for a trial on the spot, he would, he thought, have been nearer an end of his business than he then was. Thus far, Cranfield said, Mason had summoned but one person before him who had given reasons for refusing to agree to his terms. Upon finding that the people were "fixed in their opinion," Mason, upon Chamberlain's advice, pressed him to restrain the cutting of firewood, a measure which would have led to ill consequences had he consented to it, for without wood for firing and for merchandise the poor people would perish. In fact, had he yielded to the violent courses that Mason and Chamberlain had urged, he would have "greatly amazed and prejudiced the people" without promoting the king's interest, which was superior to that of any private individual. Further, he declared that, even if Mason did get 6d. in the pound on the value of all the improved lands in the province, it would not (for all his high talk about a fifth of the rent) amount to £100 a year.[1]

This last statement is found also in a letter which he sent to one of the king's secretaries of state. In this letter he asserted that if Mason should dispossess the towns of their unimproved lands, it would be impossible for above four or five families to subsist therein, for they would have nowhere to feed their cattle. In fact, he declared that most of the people said they would be compelled to leave the province unless the proprietor accepted an acknowledgment for both the unimproved and the improved lands which they then enjoyed.[2]

In December Richard Waldron, the speaker of the

[1] *Calendar of State Papers*, 1681–5, § 824; *New Hampshire State Papers*, vol. xvii, p. 570.

[2] *Ibid.*, vol. xvii, p. 579; *Calendar of State Papers*, 1681–5, § 841.

assembly, also wrote to the Board of Trade. Speaking in behalf of the representatives, he said that, although Mason had "tried hard to fill the world with the equity of his claim to the property of the soil," they hoped they had done nothing to forfeit the right, which as Englishmen they enjoyed, the right namely to have the question decided on the spot and not be condemned unheard. "We have confidence," he asserted, "in the justice of our cause and trust that the interests of a whole community will be preferred to those of a single subject.[1]

By the close of that same month, Cranfield's views had undergone a complete transformation. "Let it not seem strange to your Lordships," said he, on December 30th, "that in so short a time the matters in this paper appear so different from my former discourse to your Lordships." All the council and many of the chief inhabitants are part of the grand combination of church members and congregated assemblies throughout New England and by that they are so much obliged that the prejudice of any one, if considerable, influences the whole party. As long as the preachers exert themselves against the royal authority as they do now, he would not know where to turn for honest men to administer justice. In fact, he would not be able to carry on the government for any length of time unless power should be given him to remove such of them as disturbed the peace of the government.[2] And again, less than a fortnight later, he wrote that it was absolutely necessary that the government in Massachusetts should have power to appoint and remove ministers for they have such influence and are so turbulent that, unless that power is conferred upon governors, even he in the small province of New

[1] *Calendar of State Papers*, 1681–5, § 842.

[2] *New Hampshire State Papers*, vol. xvii, p. 575.

Hampshire will not be able to govern the people. He then referred to the attitude which the inhabitants had assumed toward Mason and declared that it was his opinion that an order should be issued to allow trials between the proprietor and the ter-tenants, for in that case the latter would, he thought, come to terms with Mason "rather than be at the charge and trouble of defending a bad title and answering his appeals in England." [1] Ten days after this was written, he dissolved the assembly which had refused to pass the measures that he desired and advocated. Thereafter, in consequence of the tyrannical policy which he then adopted, the break between the representatives and himself rapidly widened, so that further legislation was almost impossible. Consequently, during the remaining years of his administration, only one act was passed, and that was for the suppression of piracy, the enactment of which had been requested by the home government.[2]

Although some took leases of Mason, most of the people refused, as during the previous administration, to acknowledge his title. After waiting a year actions were instituted against the principal landholders, that the rest might see on what ground the proprietor stood and what defense the tenant could make. But, when the first case came to trial, the defendant, Richard Waldron, to prevent the case being tried, challenged the entire jury as interested persons, since every one of them either held leases of Mason or lived on the lands which he claimed. To overcome this objection, the jurors all took an oath to the effect that they were not interested in the lands in question and would neither gain nor lose by the cause.[3] Thereupon, Waldron declared that

[1] *New Hampshire State Papers*, vol. xvii, p. 580 *et seq.*; *Calendar of State Papers*, 1681–5, § 885. Jan. 10, 1683.

[2] *Ibid.*, 906. Jan. 20th.

[3] This, in law, is called the oath of *voir dire*.

his was a leading case, that it concerned them all, and that, if he lost, all of them must become tenants to Mason. Then, he again asserted that, since they were all interested in the issue, they could not legally serve on the jury. As the trial continued, he produced no deed or record of his title, offered no evidence in support of it, and made no defense whatever. Judgment was then given in favor of Mason. In the many suits that followed, the defendants pursued the same course while the jury regularly returned the same kind of a verdict. It is said that a standing jury was kept from month to month to try such cases and that the actions were disposed of in short order. Of the many executions, however, only a few were actually levied, as it was almost impossible to get persons to buy or lease the lands thus gained. Apparently convinced of the justice of his cause, Mason, in order to remove all ground for dissatisfaction, offered to waive the benefit of the judgments thus obtained and submit the cases to trial in Westminster Hall, provided the appellants gave proper security. Of the many suits tried however, only one came before the king on appeal.[1]

During this administration the various courts of justice were created by order of the lieutenant governor and council and the judges were appointed, as provided in the royal commission, by Cranfield himself. He likewise named the sheriff who, under the law passed by the assembly, selected the jurors, as was the custom then in vogue in England. Thus, Cranfield and his friends were in a position to control the judges and influence the make-up of the juries. The right, however, of the governor and council to establish courts of justice was seriously disputed both by the assembly and the people in general. Moreover, the former

[1] *Calendar of State Papers*, 1681–5, §§ 475, 1508, 1698, 1895, 1898; *New Hampshire State Papers*, vol. xvii, pp. 591, 594; *Provincial Papers*, vol. i, p. 503 *et seq.*

had even insisted, but without success, upon nominating judges. People, too, complained that the charges of the various actions were unduly raised and excessive fees exacted. When, therefore, charges were preferred in England against the lieutenant governor, these matters were included among them. Upon being informed of the latter Cranfield ordered all the suits in which Mason was interested suspended until the authorities in London had rendered a decision as to the legality of the courts, the establishment of which most of the people, he said, thought should have been by an act of the legislature. In the report which the Lords of Trade submitted to the king in council concerning the charges, it was stated that Cranfield, instead of pursuing his instructions with reference to Mason's claims, had caused courts to be held, titles of land to be decided and exorbitant fees to be charged, without first representing the particular cases to the king as his instructions specifically commanded him to do whenever he found it was impossible to effect a settlement between the proprietor and the ter-tenants. That, however, the differences between them might be finally determined, the Board suggested that William Vaughan, one of the complainants then in England, should be allowed to bring his case on appeal to the king within a fortnight, that his Majesty might have an opportunity of judging as to Mason's right and title to the province. Meanwhile, pending a decision in that case, all suits, in which Mason's title was a factor, were to be suspended. After taking the report under consideration, the king signified his approval of it. Accordingly, Vaughan brought forward his appeal, but, in November, 1686, the case was decided against him.[1] After this decision was ren-

[1] *Provincial Papers*, vol. i, pp. 493, 515, 547, 564, 569, 570, 573, *passim*; *New Hampshire State Papers*, vol. xxix, p. 131.

dered, Mason, who was then a member of the New England council, resolved to take advantage of it. Accordingly steps were taken with this object in view but before anything of importance was accomplished, he died.

After Mason's death, in 1688, there was a lull in the struggle for the ownership of the lands of the province, but in a few years the contest was renewed. By that time, however, his heirs had sold the right and title to the province which he had bequeathed to them. Having entered into an agreement with Samuel Allen, of London, to sell to him all their possessions in New England,[1] Mason's sons, John and Robert, for the purpose of docking the entail, sued out a fine and recovery in the Court of King's Bench in England, (the lands in question being considered by a fiction of law as lying in England in the parish of Greenwich). This done, they formally transferred to Allen their title to the property, for the sum of £2750 sterling.[2] In order to strengthen his case, Allen procured the insertion, in the new charter which was granted to Massachusetts late in 1691, of a clause which reserved to him whatever right and title he might have acquired from the Masons to any of the lands within the confines of that colony. Moreover, as the towns north of the Massachusetts line were at the time under the protection of the Bay government, he deemed it prudent for the protection and advancement of his interests there to do what he could to have New Hampshire again erected into a royal province, of which he was to be the governor.[3] In this he was successful, for when it was finally determined to issue a royal commission for the government

[1] *New Hampshire State Papers*, vol. xxix, p. 143. Mason died at Esopus on the Hudson, while visiting with Gov. Andros the New York settlements.

[2] *Ibid.*, vol. xxix, pp. 145, 148, 155. Date, April 27, 1691.

[3] Record Office, *Colonial Entry Book*, vol. lxvii, pp. 182, 183, 193.

of the four towns, he was designated as the governor, while his son-in-law, John Usher, was appointed lieutenant governor with power to execute the commission in his absence.

Although some were disposed to take leases of Allen, the majority of the inhabitants refused to have any dealings with him respecting their estates. For some years the country was so involved in war that the new proprietor did not deem it advisable to prosecute in the courts his claims to the soil. After peace had been restored, however, and the province had recovered somewhat from the distressing effects of the war, suit [1] was instituted against Colonel Richard Waldron, who was one of the principal opposers of the Masonian title. The verdict being against him in the provincial courts, Allen moved to have the case taken on appeal to the king, but the judges, following the precedent set by Massachusetts, refused to allow it. When word was received in England that the province had declined to admit appeals to his Majesty, the king was highly offended, and through the Board of Trade he took occasion to inform the Earl of Bellomont, who was then governor not only of New Hampshire but of Massachusetts and New York also, that it was a matter he ought to watch very carefully against in all his governments.

After drawing up a petition of appeal to the king, Allen sent Usher, to whom on the 14th of October, 1701, he had mortgaged one-half of the province for £1500, to England to act in his behalf and to solicit again for himself the lieutenant governorship of the province. Usher's departure seems to have alarmed the leaders of the opposition,[2] which finally decided to send over an agent to act in the interest

[1] This was in 1700.

[2] Usher had been displaced in 1696 by Partridge as lieutenant governor. Record Office, *Board of Trade Papers, New England*, vol. xi, bundle M, p. 29; *New Hampshire State Papers*, vol. xxix, p. 159.

of Richard Waldron, the expense of the mission being borne by the province, inasmuch as Waldron's case vitally concerned all the inhabitants.

After hearing both parties, the Lords of the Committee for hearing appeals from the Plantations reported, that, as no proof had been offered, showing that Mason had ever been legally in possession, the judgment recovered by Waldron should be affirmed, but as the judgment was not final in its nature, Allen should "have liberty to bring a new action of ejectment in the courts of New Hampshire in order to try his title to the propriety of the lands in question, or to certain quit-rents payable out of the same." Moreover, in case upon such trial any doubt in law should arise, the jury should, they thought, be directed to find the matter specially, that is, what title the appellant and defendant severally made out to the said lands and these points of law should be reserved to the court before whom the same was tried; or if, upon such trial any doubts should arise concerning the evidence given at such trial, such doubts should be specially stated and taken in writing, to the end that, in case either party should think proper to appeal to her Majesty in council from the judgment of the court, her Majesty might be the better able to render a final decision in the case. Upon the 17th of December, the Queen in council formally signified her approval of the report and duly affirmed the judgment.[1]

While this appeal was pending, Allen presented a petition to the queen, stating that, although some people took leases from him, many others refused to pay him any quit-rents or allow him any rights in the lands within the province. Furthermore, he declared that the government, not-

[1] Record Office, *Board of Trade Papers*, vol. xi, bundle L, p. 39; *Provincial Papers*, vol. ii, p. 545.

withstanding the fact that his title had been formerly approved and allowed by Charles II, kept him out of the waste and unimproved lands, so that it was impossible for him to enter into possession of the same without special orders from her Majesty. He, therefore, prayed that the governor be commanded to permit him to enter upon and enjoy the lands in question.[1] In due time this petition was referred to the attorney general for his opinion upon three questions,—1st, whether Mason had a right to the waste lands of the province, 2d, what lands ought to be accounted waste, and 3d, by what methods could the queen put him in possession thereof. In the spring of 1703, that official reported that Allen had a good title to the waste lands of the province; that all lands lying uninclosed and unoccupied should be reputed waste; and that, if he should be disturbed in the possession thereof, it would be proper for him, inasmuch as her Majesty has courts of justice within the province, to assert his right and punish the trespassers by legal proceedings in those courts, but that it would not be proper for her Majesty to interpose unless the question should come before her on appeal from those courts, except that it might be reasonable to direct, if Mason insisted upon it at the trials, that matters of fact be found specially by the juries so that they might appear before the queen in case appeals should be made from the judgments rendered by the provincial courts.[2]

Sometime afterwards a royal letter was sent to the governor, embodying the essential features of the attorney general's report, and directing him in any future trial to de-

[1] Record Office, *Board of Trade Papers*, New England, vol. xi, bundle L, p. 20.

[2] Record Office, *Board of Trade Journals*, vol. xv, p. 397; *New Hampshire State Papers*, vol. xxix, p. 296. April 5, 1703.

mand a special verdict, if Allen insisted upon it, so that the questions of fact might on appeal be referred to the queen for final determination. On the 10th of February, 1704,[1] Governor Dudley informed the two houses that he had received a letter from the queen respecting the waste lands. Moreover, he told them that nothing would tend more to their quiet and repose or to her Majesty's just satisfaction than to have an amicable and quiet issue in that matter. "The last judgment upon the appeal," said he, "makes you sensible of her Majesty's equal administration of justice to all her good subjects, and I desire your regard to her Majesty's directions in what remains, which may give a like instance and satisfaction of your obedience."[2] In reply, the representatives requested him to represent to the queen, that they were sensible of her regard for justice in the late trial. Furthermore, they desired him to say that the inhabitants did not claim all of the province but only the property of such land as was contained within the bounds of their towns, which was less than one-third of the whole and had been possessed by them and their ancestors for more than sixty years. As for the other two thirds, they had no objection to Allen having it. In fact, they would be glad to see it planted and settled for the better security and defense of the whole. At the same time they hoped it was not her Majesty's intention to deprive them of such timber and fuel, and their cattle of such herbage as might be found on the unenclosed lands within the bounds of their present towns, for without these they said they could not subsist, it being unusual to fence in any more land than what was actually needed for tillage, the rest remaining unfenced, being used as a common pasturage for their

[1] 1703–4.

[2] *Provincial Papers*, vol. iii, p. 272.

cattle and as a common domain out of which the inhabitants got such timber and fuel as they needed.[1]

Having availed itself of the opportunity which was offered during the time that Partridge was lieutenant governor, the legislature, in the fall of 1701, had passed two acts, the express purpose of which was to secure to the towns and to the inhabitants respectively the lands which each then claimed and possessed.[2] One of these designated and determined the bounds of the several towns of the province, while the other confirmed as good and valid all grants of land which had been made to any persons by the inhabitants or by the selectmen or by any committee of the respective towns, "any law, usage or custom to the contrary notwithstanding." As the royal approbation of these acts would have effectually prevented Allen from ever recovering possession of some of the most valuable lands he claimed within the province, he used such influence as he possessed to have the same disallowed. After taking them under consideration, Sir Edward Northey, the Attorney General, reported to the Board of Trade,[3] that the act confirming town grants ought to be repealed because no regard was had to, or any reservation made of, the rights of any persons who were entitled to the lands in question before such grants were made, while the act determining the bounds of the several towns was fit for repeal, if it trenched upon the rights of particular persons. Thereupon, the board advised the queen to disallow both acts, which she did by an order in Council, dated November 11, 1703.[4]

[1] *Provincial Papers*, vol. iii, p. 275.

[2] *Ibid.*, vol. iii, pp. 153, 226, 228. Two acts similar to these had been passed during Cutt's administration, but the king had disallowed them.

[3] August, 1703.

[4] Record Office, *Board of Trade, New England*, bundles M, p. 46, and N, p. 21; *Provincial Papers*, vol. iii, p. 228.

Backed by the royal commands, Allen took possession "by turf and twig" not only of the common lands within each township, but also of all the lands beyond those bounds.[1] He also published an order, forbidding all persons to fence in or occupy any of the waste lands or cut any timber or wood upon the same unless they first obtained from him leases, which he said he was ready to give "on very reasonable terms."[2] Although a few were disposed to recognize his claims, the majority, as in the past, refused to countenance them.[3] Meanwhile, the governor was working along the lines of least resistance with the view of harmonizing the conflicting interests and having the matter brought to a speedy determination. On the other hand, Usher, who had been re-appointed lieutenant governor in 1703[4] but was under express orders not to intermeddle in any way with the appointment of judges or juries in matters pertaining to the dispute between Allen and the inhabitants,[5] was by his conduct creating discord. Instead of endeavoring to preserve the *status quo* in governmental affairs, pending the settlement of Allen's case, Usher, soon after taking office, determined to make some changes which were not calculated to preserve harmony. He first made up his mind to dismiss John Hinckes from his post as captain of the fort. Upon hearing of this, Dudley informed him that he was sorry there was an misunderstanding between him and Captain Hinckes, because the latter was a member of the council and also chief justice. On account of Allen's af-

[1] Belknap, *History of New Hampshire*, vol. i, p. 317.

[2] Record Office, *Board of Trade, New England*, bundle O, p. 24, December, 1703.

[3] *Ibid.*, bundle P, p. 6.

[4] *Provincial Papers*, vol. ii, pp. 405, 406.

[5] *Board of Trade Papers, New England*, vol. xi, bundle M, p. 29.

fair he did not think it prudent to deal harshly with such a man. As these words failed, however, to produce the desired effect, he again urged the lieutenant governor to come to a good understanding with the captain, saying that nothing would please him better and that he would exert himself to the utmost to bring it about as soon as his health permitted. As Usher was also bent on removing several other officers, Dudley, to prevent as much mischief as possible, gave the lieutenant governor to understand that thereafter he would sign all commissions for New Hampshire himself. About this time too Usher seems to have had a misunderstanding with Colonel Allen, for in the spring of 1704, the governor informed the Board of Trade that it might prove the greatest obstruction to a settlement of the case.[1]

As most of the inhabitants still refused to countenance his claims, Allen at last determined to bring the matter to an issue in the courts. Since it was necessary to make use of some of the records, containing the judgments which had been formerly obtained by Mason against various persons in the province, application was made to the recorder of the province for permission to inspect them. Upon examining the book containing the records desired, it was found that it had been mutilated, some twenty-four pages having been cut out.[2] These pages undoubtedly contained the evidence upon which Mason had procured the verdicts in his favor, and the decrees of the court in those cases. In consequence of the mutilation, the latter were obliterated so that there was no judicial evidence that Mason had ever obtained possession. The result was that the work had to be begun anew. Upon making the discovery,[3]

[1] *Board of Trade Papers, New England,* vol. xi, bundles N and O.

[2] *Ibid.*, vol. xi, bundles A, pp. 18, 56, O, p. 11.

[3] *Provincial Papers*, vol. iii, p. 297.

Allen petitioned the governor to take the matter under consideration and grant him, if possible, some relief. Upon inquiry, it was found that the records had been in the possession of Richard Chamberlain from 1682 until the Revolution of 1689, when they were forcibly taken from him by Captain John Pickering. Later, through the efforts of Usher, they were lodged in the office of the secretary, where they remained until they were delivered by order of Lieutenant-Governor Partridge and the assembly to Major William Vaughan. Upon the latter's appointment as agent for the province in England the books were turned over to Samuel Penhallow, in whose possession they were at the time when the inquiry was instituted. Upon being examined, Penhallow testified under oath that he had received the books of records in such form as they then were and particularly the book in question, "out of which twenty-four leaves were cut in the same manner as it is now seen" by the council. What person was responsible for the mutilation the inquiry failed to disclose, but as the records, during the entire period from 1682 to 1702, with the exception of the years when Pickering and Vaughan had them, were in the hands of those who were favorably disposed to Allen's claims, it is probable that the mutilation was done either when Pickering had the records or during the time when they were in the possession of Vaughan; for both of these men were active and bitter opponents of Mason's claim and had everything to gain by suppressing or destroying the records of Mason's judgments. Under the circumstances, therefore, the governor and council could do nothing but pass an order giving Allen permission to further search the records for such papers or documents as might in any way concern his affairs in the province.[1]

[1] *Provincial Papers*, vol, iii, p. 299.

Finally, a test case was instituted by Allen against Waldron. Both parties agreed that it should have a full trial, while Dudley announced that he would be present to see that the queen's commands were obeyed and a special verdict rendered accordingly.[1] Writing to the Board of Trade in October, 1704, the governor said that he was sorry he could not influence the matter to a present agreement but he was convinced that, if judgment was once rendered by her Majesty in Council against one of the ter-tenants of any value, the whole province would immediately submit. Although he twice ordered the court adjourned[2] so that he might be present when the case was called, the trial was finally held without him, as he was unavoidably detained on the road while on his way from Boston to attend the Court. Although the royal orders directing the jury to bring in a special verdict were read, the jury refused to comply with them but found for the defendant with costs.[3] Thereupon, Allen gave notice of an appeal to the governor and council.

Notwithstanding the fact that the verdict was against Allen, it was fully realized that the controversy over titles to land within the province was by no means ended. As Allen was disposed to treat with the inhabitants on very favorable terms, the latter were inclined to enter into an accommodation with him. Availing himself of the fair opportunity, which thus presented itself, of ending all differences between the opposing parties,[4] Dudley, on the 26th of April, 1705, communicated his views on the subject to the legislature, which in turn voted that a meeting should be held in every town within the province, at which the free-

[1] Record Office, *Board of Trade Papers*, *New England*, bundle P, pp. 6, 7.

[2] *Ibid.*, p. 46.

[3] *Ibid.*, bundle R, pp. 16, 17.

[4] *Ibid.*, bundle P, p. 46.

holders of each town should choose two of their own number as commissioners, fully empowered to meet at Portsmouth on the 1st of May and there join the members of the assembly, "to discourse, debate and determine what may be most advantageous for the benefit of the province, relating to Mr. Allen's claims to the same." [1]

At the meeting, which was held in Portsmouth, it was resolved that the inhabitants had no claim or challenge to any part of the province beyond the bounds of the four original towns and the hamlets of New Castle and Kingston, and that, as far as they were concerned, Allen might peaceably hold and enjoy the great waste beyond the heads of those towns, if her Majesty should so decide, being assured of such aid and encouragement in the settlement of the same as the inhabitants might be able to render. Moreover, if Allen quit-claimed to the inhabitants the lands within the respective towns and guaranteed the same to them free from mortgage, entailment and all other incumbrances, they would agree, provided the queen approved this method of settlement, to lay and lot out to Allen 500 acres of land in Portsmouth and New Castle; 1500 acres in Dover; 1500 acres in Hampton and Kingston, and 1500 acres in Exeter. In addition to that, they would agree to pay Allen £2000 current money of New England. Furthermore, they would consider "all contracts and bargains formerly made between Mr. Mason and Mr. Allen and any of the inhabitants or other of her Majesty's subjects which were bona fide for lands or other privileges in the possession of their tenants in their own just right . . . as good and valid;" but if any of the purchasers, lessees or tenants should refuse to pay their just proportion of the money which the inhabitants agreed to pay to Allen, then the sums, assessed against such

[1] *Provincial Papers*, vol. iii, pp. 305, 306, 355.

persons, should be deducted from the £2000 above mentioned. Finally, all actions and suits concerning lands were to cease, determine and be void until her Majesty's pleasure in the matter was made known.[1]

Having agreed upon these resolutions and propositions, the assembled delegates ordered that they should be presented to Allen for his acceptance. But "so desirable an issue of the controversy was prevented by his sudden death, which happened on the next day."

Concerning this offer the governor, in a letter written to the Board of Trade a few days after Allen's death,[2] said that it was a hearty recognition of the proprietor's title and he had no doubt but that, if peace came, £4000 at least could be made out of the 500,000 acres conceded to Allen, inasmuch as it was much better land than any already planted; while the 5,000 acres which were reserved to him within the limits of the several towns would, he thought, make good farm lands and "presently sell for £1000." He expressed the belief that Allen would have accepted the offer. Although he did not then know what Usher or Allen's son would do in the matter, he assured the board that they could rely upon his hearty coöperation; but, he added, "Mr. Usher will not be capable of being served by me, being so very unlike Mr. Allen's even and agreeable temper." Although he twice adjourned the appeal which Allen had previously made to the governor and council in the hope that the proprietor's son and heir, who lived in London, would appear, he informed the Board in November that he was fully convinced the issue would be the same before the council, as all the members were tenants in the province. "It is

[1] *Provincial Papers*, vol. ii, p. 548; vol. iii, p. 275; *New Hampshire State Papers*, vol. xxix, p. 165.

[2] Record Office, *Board of Trade, New England*, bundle P, p. 46; letter dated May 9, 1705.

most certain," he said, "there is not one person in the province of New Hampshire, councillor, judge or juryman, who will ever be found to do that title right," because all of them are "concerned in the lands of the province." [1]

From Usher's letters, it appears that the offer was not regarded by him as favorable to Allen. He was of the opinion that one foot of land by the sea-side was more valuable than one hundred feet in the interior, and he told the Board of Trade that he did not think the offer would have been accepted by Allen, had he lived. As for himself, he was in favor of having the case go on appeal to England as it would be "very prejudicial to Mr. Allen's interest" to have it tried again in the province just at that time.[2]

As for Thomas Allen, the late proprietor's son and heir, he did not come to America as the governor expected, but remained in England, where he preferred a petition to the queen, praying that the appeal which was abated by his father's death might be revived in his name.[3] The attorney general, however, to whom the petition was referred, declared in March, 1706, that the appeal could not be revived, a new writ of error being necessary. Furthermore, he said it was not advisable for the Crown to prohibit the tenants in possession from committing waste pending the suit, because the verdict had been found against the petitioner's title.[4] Soon afterwards Allen presented another petition, as the result of which a royal order was issued which not only gave him permission to bring a new writ of ejectment but revived the orders which had been previously issued respecting the finding of a special verdict.[5]

[1] Record Office, *Board of Trade, New England*, bundle P, p. 78.
[2] *Ibid.*, bundle R, p. 17; bundle O, p. 11.
[3] *Ibid.*, bundle P, p. 43. [4] *Ibid.*, bundle Q, p. 36.
[5] *Provincial Papers*, vol. ii, pp. 544, 545. May 16, 1706.

Accordingly a new writ of ejectment was issued against Waldron. As before, however, the case was decided against Allen, whose counsel immediately carried it on a writ of error to the Superior Court, where the decision of the lower court was confirmed. Although a special verdict had been demanded and the jury had been sent back to further consider the case and observe her Majesty's directions to find specially, it refused to alter its verdict. Judgment, therefore, was ordered entered for the defendant.[1] At this trial Waldron grounded his right of possession upon an Indian deed of 1629, and in support of his contention, he laid before the Court what is now known as the Wheelwright deed, of May 17, 1629.[2] As Captain Mason did not receive his first grant of New Hampshire until November of that year, the object which Waldron had in view in offering it as evidence is obvious. When presented to the court, it appears to have been regarded as genuine, but soon afterwards it was suspected by some to be a forged document, and now it is generally regarded as such. Usher, in a letter to the Board of Trade says, "upon enquiry, Wheelwright came into the country many years after the date of said deed . . . so forging, cutting out of records and lying are no crimes in Vaughan and Waldron as may appear per Mr. Allen's case."[3] Another paper which was put in evidence is so clearly a forgery that it is hardly possible for any one to defend it. It purports to be a letter from Captain Walter Neale and Captain Thomas Wiggin, agents respectively of the Laconia company and the Hilton patentees

[1] *Provincial Papers*, vol. ii, p. 520. 1707.

[2] *Ibid.*, vol. ii, p. 56. This must not be confused with the Wheelwright deed of 1638, which Wheelwright obtained when Exeter was founded.

[3] Record Office, *Board of Trade Papers, New England*, bundle A, p. 54.

stating that they had, in obedience to the commands of their superiors, made a division of the two patents and laid out four towns, one of which they said was not within the bounds of either patent.[1] This one they styled Exeter, while the other three they called Portsmouth, Hampton and Northam. As a matter of fact, these towns were not given these names, or even known by them, until many years afterwards, while neither Exeter nor Hampton were at that time settled, and it is improbable that their establishment was even contemplated.

Upon the refusal of the jury in the Superior Court to render a special verdict, Allen's council made a motion for an appeal to England, which the judges granted upon his giving a bond of £200 to prosecute the case before her Majesty in council.[2] As the inhabitants at this time, and for several years afterwards, were involved in a war with the French and Indians, the Privy Council deferred the consideration of the appeal until a more favorable time. But Allen's death, which happened in 1715, before a final decision in the case had been reached, put an end to the suit, which his heirs, who were minors, did not renew.

At the various trials of this famous suit both plaintiff and defendant introduced much evidence in support of their respective contentions.[3] To substantiate Allen's claims to the lands, copies of many documents and other papers were produced, such as the charter of the Plymouth company of 1620 and the grants made by it to Captain Mason in 1629 and 1635; the latter's last will and testament; the opinions

[1] *New Hampshire State Papers*, vol. xxix, p. 52; *Provincial Papers*, vol. i, p. 85.

[2] *Ibid.*, vol. ii, p. 561. August, 1707. At this trial in 1707 the counsel for Waldron were John Pickering and Charles Story, while James Menzies and John Valentine represented Allen.

[3] *Ibid.*, vol. ii, pp. 515–562.

and decision of the royal judges and other officials respecting the validity of the title; the fine and recovery for docking the entail and the consequent deed of sale to Allen in 1691, and several royal orders and directions which had been issued at various times affecting the case. There were also many affidavits and depositions from persons who either had been in Mason's employ or were acquainted with those who had served under him, all of which were introduced with the view of showing that Mason had spent considerable sums in furthering the development of his territory and had been in actual occupation of the same. Then there were presented to the court the writ, judgment and execution issued against Major Waldron in 1683, the decision of the king in council against Vaughan in 1686, and evidence that Allen had formally put himself in possession of the waste lands. Other material of a miscellaneous character was also introduced.[1]

On the strength of all this, it was contended that the title which Allen obtained from the Masons must be regarded as good and valid, that he and those from whom he derived his title had been constantly in lawful possession of the province of which the premises demanded were a part, and that Waldron's possession of the latter was unlawful and had always been interrupted by continued claim made for the same, and especially by a judgment obtained by Mason by virtue of which he recovered possession of the lands demanded.[2]

In vindication of his title, Waldron presented, in addition to what has already been mentioned, the queen's order in Council affirming the judgment obtained by him against

[1] *Provincial Papers*, vol. ii, pp. 515, 562, *passim*.

[2] *Ibid.*, vol. ii, p. 522; Belknap, *History of New Hampshire*, vol. i, p. 322.

Allen in 1700, the verdict procured against Allen in 1705, and some depositions from persons who either assisted or at least knew his father at the time he established himself at Dover and who swore that he had remained in undisturbed possession of the property for more than forty years. Many papers of a miscellaneous character were also introduced. It was pleaded that Mason's title to the province was defective because the grants of 1629 and 1635 were not signed by any of the officials of the Plymouth company, neither were they enrolled as the statute of England required, nor was livery of seizin ever taken of the lands so conveyed.[1] Moreover, it was asserted that the grant of 1629 looked "very suspicious, and was indeed of no worth and value in law," for a good part of the land conveyed by it had, in 1628, been granted by a valid deed to Massachusetts, and even Mason himself had seen fit to procure, in 1635, another deed for the same land as had been granted to him in 1629, which in itself showed that he thought his grant of 1629 could not be relied upon. Waldron's counsel declared that it was "a thing in itself not to be supposed or believed that the council of Plymouth should be so imposed upon as to grant to Mr. Mason in 1629 what they had before granted to the Massachusetts in 1628, or yet a second time, to wit, in 1635, grant that to Mason which they had before granted in 1629 . . . so that in truth there never was, nor could be, any such grant from the Council of Plymouth as that in 1629, but that the same is a pretended grant and no more." He also contended that Allen could not hold under two grants, but must relinquish one, inasmuch as it was "contrary to the reason and usage of the law to rely upon two titles." Concerning Mason's possession of the property, it was said that the only settlement

[1] *Provincial Papers*, vol. ii, p. 524.

made by the Captain's agents or successors was that of a factory which was established for the purpose of trading with the Indians and as a base for the discovery of the country called Laconia, but this settlement, it was contended, never amounted to a legal possession sufficient to make or confirm a title to the lands of the province, because after a few years the enterprise was given up and the place deserted.[1] It was claimed, on the other hand, that Waldron's father had actually taken possession of the lands now in controversy more than sixty years ago, by virtue of an Indian deed of 1629, at a time when it was not only a vacuum domicilium but also a howling wilderness, situated among the barbarous savages, against whom he was forced in several successive wars to defend himself and his possessions at a very great cost to himself and at the risk of his own life, which he finally lost in the struggle. As to the writ of judgment and execution which were issued against Waldron's father, it was affirmed that, as no particular lands were specified in it, no legal judgment could be given. Furthermore, the particular judgment referred to was not legally attested, as no book of records was to be found. Moreover, execution had never been levied by virtue of such a judgment, nor had the possessor ever been disturbed in the possession of his property in consequence of it.[2] Concerning the finding of a special verdict, as was demanded, it was asserted that no jury was obliged to give such a verdict or find the matter at large unless they had some doubt as to the law or the facts in the case before them, because a special verdict in itself indicated that such a doubt existed. It was also contended that Allen's right to the premises in question was barred by several statutes of limitation. Thus, it was claimed that, under the law of the realm, no

[1] *Provincial Papers*, vol. ii, p. 525. [2] *Ibid.*, vol. ii, p. 527.

action of ejectment could be maintained unless the plaintiff or those under whom he claimed had been in possession of the lands within twenty years of the time the suit was brought, and that if a person had been out of possession sixty years, as in the present case, not only an ejectment, but a writ of right and all other real actions were barred as far as the subject was concerned, and that in such cases even the title of the crown was barred. Moreover, it was alleged that as Allen had never so much as pretended that the Masons were ever in possession of the land in dispute during the year prior to his father's purchase of the province, or in fact at any other time, he ought not to have purchased it, for such a purchase was in violation of that statute of Henry VIII's reign which provided that no person should purchase any property unless the seller or those from whom he claimed had been in possession of the same within the year immediately preceding the date of sale. In consequence of a purchase under such conditions, it was claimed, all the mischiefs and inconveniences provided against by the statute had been experienced by the inhabitants of the province.

Believing that justice was not to be expected where both judges and jurors were directly concerned in the issue, Usher informed the Board of Trade that he would have Allen resign his claim to the crown for a monetary consideration. In that case, quit-rents could be collected, which, with the impost and excise duties, would, he estimated, amount to more than £2,000 a year. As for the mortgage which he himself had on the province, he said he would surrender that to the crown upon payment by the latter of the principal and interest, which then amounted to £1,700.[1] Moreover, he thought the possession of both the soil and

[1] Record Office, *Board of Trade Papers, New England*, bundle S, pp. 56, 58.

the government of the province by the crown might serve to prevent the great waste and destruction which was going on in the virgin forests and preserve for the use of the royal navy all such trees as were fit for masts and timber.[1]

During this period, Governor Dudley also represented to the Board that it would be well if the differences between Allen and the inhabitants could be composed. Moreover, he informed their lordships that the assembly prayed to "see an end to the thirty years' quarrel between Mr. Mason, Mr. Allen and themselves."[2] If the queen would take the province and give Allen some compensation commensurate with his pretensions and charges, her Majesty would have it in her power to grant out the lands that were still undisposed of. Otherwise, he said, it would be hard both on Allen and on the inhabitants.[3] With Allen's death, however, in 1715, the situation changed, for the guardians of his two infant sons, to whom his estate descended, apparently took no steps to put them in possession of any of the lands within the province.

Prior to the trial of his suits in the New Hampshire courts, Thomas Allen had sold to Sir Charles Hobby, of Boston, one-half of his interests in the province.[4] During his lifetime Sir Charles never sued for possession of the lands he claimed by virtue of that purchase, nor did his heirs do so after his decease. In January, 1716, however, his executors offered to sell to the province his interest and title to the lands within the same.[5] Thereupon Lieutenant-

[1] Record Office, *op. cit.*, bundles S, p. 86, V, p. 42.

[2] *Ibid.*, bundle S, p. 26. [3] *Ibid.*, bundle T, p. 3.

[4] *New Hampshire State Papers*, vol. xxix, pp. 167, 298. On August 31, 1705 there was an indenture executed between Allen and Carleton van Burgh, who was acting in behalf of Hobby, and on August 28, 1706 there was one between Hobby and Allen.

[5] *Ibid.*, vol. xvii, p. 724; vol. iii, p. 631, *passim*.

Governor Vaughan informed the house of representatives of the offer, but that body, like himself, was of the opinion that the matter did not directly concern the government.[1] When, however, the creditors of the estate applied to the judge of probate for letters of administration, the assembly was inclined to put obstacles in the way of their obtaining them and had the case postponed from time to time.[2] In November, 1726, Sir Charles' son and heir, John, presented a memorial to the lieutenant-governor and the two houses. After informing them of his right to half the province, he said that, since the main and principal parts of New Hampshire were "actually settled by the labors and at the great expense of the blood and treasure of the present inhabitants," he was willing to make them very easy in their possession, however they were induced at first to possess themselves wrongfully of the lands. He accordingly proposed that the legislature should take such action as would give complete satisfaction to the inhabitants and at the same time not utterly disinherit him. As he believed it would be best for both parties to have the matter settled in a friendly way, he suggested that a committee should be appointed by the legislature to represent the inhabitants so that the matter might be "freely and friendly" debated and mutual offers and proposals made for the accommodation of all concerned.[3] After holding a conference on the subject and debating the question at some length, the house passed a vote, which the council concurred, dismissing the petition both on the ground that the laws of the province were sufficient to determine any controversy with respect to any title of land lying within the same and because it was unprece-

[1] *New Hampshire State Papers*, vol. xviii, p. 394; vol. xxix, p. 173.

[2] *Ibid.*, vol. xxix, pp. 174, 175.

[3] *Ibid.*, vol. xviii, p. 5; vol. xxix, p. 175.

dented for the house to take any cognizance where the title to land was determinable by the courts of common law.[1] After this decision was reached, nothing further appears to have been done in the matter until after the middle of the century, when an attorney arrived in the province to look after the interests of the estate. After looking over the ground and examining into Allen's title, he was apparently convinced that there was no chance of successfully asserting Hobby's claim, for he relinquished the pursuit and left the province, after which no more was heard of it.[2]

In 1677 the English chief justices gave it as their opinion that the northern boundary of Massachusetts could "not extend further northward along the river Merrimac than three English miles," and was to follow, at that distance, the course of the stream as far as its source, whence it was to be carried on by an imaginary line to the South Sea.[3] Although the king formally confirmed this opinion on the 20th of July of that year, Massachusetts made no attempt to have the boundary line marked out, nor did her towns upon the river relinquish jurisdiction over or give up the lands within their bounds which lay more than three miles from the river's bank. After New Hampshire was erected into a royal province, the need of having the boundary officially surveyed was more urgent and apparent. Some of the people living near the supposed line frequently tried to evade the payment of their taxes, claiming, when arrested by one town, that their lands were within the limits of the other province. At times, too, people were thrown into prison and occasionally kept there, even after they could prove that they had paid their taxes to the constable of the

[1] *New Hampshire State Papers*, vol. xxix, p. 177.

[2] *Ibid.*, vol. xxix, pp. 282, 286, 323, 328.

[3] *Ibid.*, vol. xix, p. 306.

adjoining town. Then, too, by using this as a pretext, some attempted to evade jury duty, while those who committed offences against the law were apt to go unpunished. Sometimes, also, even officials, when engaged in the performance of their duties, were arrested by officers of the neighboring towns across the border and put in jail. From the disorder and confusion that arose as a result of this state of affairs New Hampshire was the chief sufferer, for she was not only the weaker of the two provinces, but the lands claimed by the Massachusetts towns were, according to the opinion of the English judges, undoubtedly hers.

In 1693[1] New Hampshire appointed a committee to run the line, but as Massachusetts failed to coöperate, nothing was actually done. After making another attempt to have Massachusetts join her in running it, Lieutenant-Governor Usher, in 1696, had the line surveyed as far west as the settlements extended.[2] Since Massachusetts, however, refused to recognize this as a boundary, very little was gained thereby. The troubles along the border continued as before, and as the population increased they increased. Although the New Hampshire authorities made several other attempts to have the matter settled by a joint committee of the two provinces, no progress could be made tending to a final settlement of the case because Massachusetts always insisted upon New Hampshire submitting to conditions that were unfair to the latter and inconsistent with the words of the charter describing the boundary.

After an attempt of this kind, made in 1719, New Hampshire sent instructions to Henry Newman, who had been appointed agent for the province in England, requesting him to lay the question of the province boundaries before

[1] *New Hampshire State Papers*, vol. xix, pp. 180, 181.

[2] *Ibid.*, vol. xix, pp. 182, 184, 186; for map of same see p. 354.

the king. Newman was informed that the southern boundary of the province was conceived to be a line drawn west from a point on the coast three miles north of the Merrimac river. As for the northern boundary, which, according to the charter, was to run "northwestward" from the furthest head of Newichwannock river, a dispute, it was said, would arise whether it should run north a little west or due northwest.[1] To enable the agent to vigorously press the matter before the authorities in London, the legislature voted him £100.

By virtue of the opinion of the English judges in 1677, Massachusetts claimed all the territory west of the Merrimac and a three-mile strip on the other side of the stream towards New Hampshire. Until after the close of Queen Anne's War very little attention was paid to this claim, because it was practically impossible for either province to plant settlements so far in the interior on account of the hostilities with the Indians. Later, a doubt arose whether the territory granted in the new charter of Massachusetts, which passed the seals in 1691, was co-extensive with that conveyed in the original charter of that colony. The two provinces took opposite sides on this question. If the question was decided in the affirmative, then New Hampshire comprised the comparatively small tract of country contained between the Maine border and a line drawn parallel to but three miles from the bank of the Merrimac river from its mouth to its source.

Soon after the General Court at Boston passed a grant for a tract of land on both sides of the river at a place called Penacook (now Concord),[2] Lieutenant-Governor Wentworth complained to the lieutenant-governor of the

[1] *New Hampshire State Papers*, vol. xix, pp. 193, 194, 199, 210.

[2] January, 1725–6.

Bay concerning it, and suggested that the place was within the bounds of New Hampshire.[1] Upon communicating the letter to the council of Massachusetts for its opinion, his honor was informed that the suggestion was altogether groundless, as those who were empowered to lay out the town had no right to extend its bounds more than three miles from the river in the direction of New Hampshire.[2] Thereupon a reply to this effect was sent to Lieutenant-Governor Wentworth, who considered it unsatisfactory. He, therefore, called the attention of the assembly to the Bay's encroachments, and, after citing as an instance the grant of Penacook, which he declared would certainly be within "the very bowels" of New Hampshire and take in the most valuable part of the province, he recommended that they should take some action in the matter.[3] At the same time he informed them that he had sent a representation of the affair to the Lords of Trade, requesting their favor in the settlement of the lines. In reply, the assembly said they would take the matter under serious consideration. The following month [4] the council passed an order appointing a committee to repair to Penacook and, in behalf of the government, warn persons not to settle there as the lands were within the limits of New Hampshire. Finding some Massachusetts men on the spot felling trees and laying out the lands, the committee communicated to them the nature of their errand and the order of the council, but the men refused to withdraw, declaring that, as they had been sent by the Bay government, they would proceed to finish the

[1] February, 1725–6.

[2] *New Hampshire State Papers*, vol. xxiv, pp. 41, 43, 44, March, 1725–6.

[3] *Provincial Papers*, vol. iv, p. 206; Bouton, *History of Concord*, p. 77, April, 1726.

[4] May, 1726.

business they were engaged upon, not doubting that their government would always be ready to support and justify their grant. They promised, however, upon their return, to lay the council's order before the General Court.[1] Thereupon the legislature of New Hampshire voted to send instructions to its agent in England "to prosecute and endeavor a speedy settlement of the lines." Besides, it forwarded him £100 to forward the work.[2] Apprehending that New Hampshire would send home a complaint respecting the grant of Penacook, the Bay government, in June, instructed its agent to take effectual care to answer any complaint of that nature. Moreover, to enable him to make an adequate reply, it furnished him with the necessary papers and records. Upon receipt of the news of the encroachment at Penacook, Newman, the agent for New Hampshire, sent a letter to the Board of Trade, requesting that, pending the king's decision upon the memorial which he had some time previously presented respecting the settlement of the lines, the Board would use its influence to secure his Majesty's interest in the province of New Hampshire from any detriment by the grants already made, and have all the grants on or near the boundary lines suspended.[3]

Although Massachusetts, in May, appointed commissioners to join such as New Hampshire might appoint to run the line, the latter now refused to choose any, not only on the ground that the previous attempts to settle the controversy by such a method had failed, but because the whole matter was before his Majesty for determination.[4]

As the General Court continued to receive and consider

[1] Bouton, *op. cit.*, pp. 70, 78, 81.

[2] *New Hampshire State Papers*, vol. xix, pp. 200, 201.

[3] *Ibid.*, vol. xix, p. 202; Bouton, *op. cit.*, p. 82, August 8, 1726.

[4] *New Hampshire State Papers*, vol. xix, pp. 201, 205.

petitions for grants of land in the disputed territory along and west of the Merrimac river, it was evident that Massachusetts intended to make numerous township grants in that section. This alarmed the government of New Hampshire, which determined, on its part, to bring the matter to an issue. In May, 1727, the latter granted out all the unappropriated land of the province south of the outlet of Lake Winnepesaukee and east of the Merrimac river, dividing it up into six townships. The lands of one of these townships, namely, Bow, extended beyond the river and overlapped a good part of Penacook. As a result a long and bitter controversy arose between the opposing grantees, which continued until the close of the last inter-colonial war. In 1729 both governments again joined in appointing a committee to run the line, but, as in the previous attempts of that nature, nothing was accomplished.[1]

Meanwhile, the applications of the New Hampshire agent were so far successful that, when Belcher became governor, there was included among his instructions one to the effect that he should recommend to the assemblies of the two provinces the appointment of commissioners from the neighboring governments, with full power to determine the dispute over the lines. After the General Court of Massachusetts had chosen three commissioners, as commanded, the representatives of the lower branch of the New Hampshire legislature decided that it would be best to have the boundary dispute determined by but three men, as many inconveniences might arise if a greater number were chosen.[2] Accordingly, instead of naming three others, as directed in the royal instructions, they approved two of the three commissioners chosen by the Bay, finding them acceptable in

[1] *New Hampshire State Papers*, vol. xix, pp. 206, 210.

[2] *Ibid.*, vol. xix, pp. 212, 213.

every way, and selected as the third the governor of Rhode Island. In this selection the General Court acquiesced. In the act appointing the commissioners, Massachusetts gave the latter power to order an equivalent to be given and received by each government in lieu of any lands which either then possessed or had improved by virtue of ancient grants and patents.[1] This New Hampshire claimed was not consistent with the royal instructions. If allowed, Massachusetts would probably receive a large tract of country as an equivalent while New Hampshire would get little or nothing. Objection was also made to the method which Massachusetts proposed should be adopted in case it became necessary to select a commissioner to serve in the place of any who failed to qualify. The method, however, which the representatives, in turn, proposed was not approved by the upper house, which suggested the appointment of a committee by the two governments to confer and agree upon a bill covering the points in question. If Massachusetts declined to appoint such a committee or the joint committee failed to reach an agreement, then the council would have the governor refer the matter to the king for decision.[2] The representatives, however, declared against this, for the reason that the appointment of such committees in the past had proved ineffectual. Although they were strongly of the opinion that the dispute would never be settled except by an appeal to the king, they were finally persuaded to appoint a committee, as suggested by the council. Again, however, nothing was accomplished, as the General Court did not appoint a similar committee until the last minute, and then set the date for the meeting more than two weeks

[1] *New Hampshire State Papers*, vol. xix, p. 214.

[2] *Ibid.*, vol. xix, pp. 214, 216, 217, 218.

later than that named by New Hampshire.[1] The house was now more anxious than ever to have the case referred to the king but as the council would not consent to it, still another attempt was made to have committees of the two provinces agree upon a suitable bill. As the Massachusetts committee, however, had instructions to reserve to the respective governments, both as to jurisdiction and property, any towns or lands which were either possessed or improved by virtue of any ancient grants, the New Hampshire committee refused to proceed, declaring that if that was agreed to, it "would bring the boundary line at least eleven and three-quarter miles to the northward of the Merrimac river."[2] It was then proposed that an agent should be appointed to press for an early settlement of the controversy, but the council refused to concur. Thereupon the house appointed as the agent for the province in England John Rindge, who was then about to sail for the other side. Some of those who were in favor of having the lines determined now had another object in view. This was nothing less than to have the settlement of the lines followed by the appointment of a separate governor for New Hampshire. The party to which these men belonged was strong in the house but weak in the council, where Governor Belcher's friends were in control. This explains why the council refused to join in appointing an agent and will serve to make plain the future conduct of that body.

Early in 1733 Governor Belcher wrote a letter to the Board of Trade explaining the attitude of the two govern-

[1] *New Hampshire State Papers*, vol. xix, pp. 219, 220, 222. Date of meeting according to N. H. vote, June 22d; date of meeting according to Mass. vote, July 11th. N. H. committee appointed in May; Mass. committee appointed in June.

[2] *Ibid.*, vol. xix, pp. 222, 228, 229, 231; *Provincial Papers*, vol. iv, pp. 611, 612, 617.

ments respecting the boundary dispute.[1] After stating that he saw no prospect of having the boundary settled, although he had done everything in his power to have the same determined, he said:

The poor borderers on the lines . . . live like toads under the harrow, being run into jails on the one side or the other as often as they please to quarrel. They will pull down one another's houses, often wound one another and I fear it will end in bloodshed, unless his Majesty . . . give some effectual order to have the bounds fixed. Although, my Lords, I am a Massachusetts man, yet I think this province alone is culpable on this head. New Hampshire has all along been frank and ready to pay exact duty and obedience to the king's order and has manifested a great inclination to peace and good government, but, in return, the Massachusetts province have thrown unreasonable obstacles in the way of any settlement, and, although they have for two or three years past been making offers to settle the boundaries with New York and Rhode Island in an open, easy and amicable way, yet, when they come to settle with New Hampshire, they will not come to terms, which seems to me a plain argument that the leading men of the Massachusetts assembly are conscious to themselves of the continual encroachments they are making upon their neighbors of New Hampshire and so dare not come to a settlement. I say, my Lords, in duty to the king and from a just care of his subjects of New Hampshire, I think myself obliged to set this matter in this light. I now do not, nor do I ever, expect to see it settled but by a peremptory order from his Majesty, appointing commissioners to do it.

He then concluded by desiring their lordships to so represent the affair to the king that an end might be made to the continual strife and confusion.

Some time after his arrival in England, Rindge, the province agent, presented a long petition to the king in

[1] *New Hampshire State Papers*, vol. xix, p. 233, January, 1732–3.

council, stating what New Hampshire had done in the past to have the boundary line settled, and praying for a determination of the same now by his Majesty.[1] This and eight other petitions on the same subject by the inhabitants of New Hampshire were given to the Massachusetts agent for transmission to that government.[2] Mr. Parris, the able solicitor who was employed by the agent to protect New Hampshire's interest, insisted that, before any commissioners were appointed to run the line, the point on the Atlantic coast from which the three miles from the mouth of the Merrimac were to be measured should first be determined. His contention was that the determination of that point was purely a judicial question, depending solely upon the true and legal construction of the charter granted to Massachusetts. Consequently it ought to be determined by the home government and not left to mere surveyors or mathematicians in America. This being decided, the commissioners, he asserted, would have very little trouble or difficulty in running the line.

In February, 1734, the Massachusetts agent said that he was willing to have the boundaries settled by such wise and disinterested persons as his Majesty saw fit to appoint from the neighboring governments. Furthermore, in behalf of the government he represented, he agreed and consented that the commissioners should have "the matter in controversy left to them fully and without any limitations, saving only that the lines, however they may happen to be run, do not affect the property of particular persons."[3]

Immediately afterwards the agent for New Hampshire

[1] *New Hampshire State Papers*, vol. xix, p. 235; *Provincial Papers*, vol. iv, p. 849.

[2] *New Hampshire State Papers*, vol. xix, pp. 235, 249, 256.

[3] *Ibid.*, vol. xix, p. 251; *Provincial Papers*, vol. iv, p. 849. Several years later he said he had received no authority to make this agreement.

preferred a petition to the Board of Trade embodying the questions previously raised by Mr. Parris, and praying that the place where the line should begin and the course it was to follow should first be determined before any commissioners were appointed. After some delay,[1] the question as to the point from which the dividing line should begin was referred to the attorney and the solicitor general, both of whom reported to the board on the 19th of March, 1735, that it ought "to be taken according to the intent of the charter of William and Mary from three miles north of the Merrimac river where it runs into the Atlantic Ocean."[2] The following June the board presented to the Privy Council a report incorporating this opinion and recommending that the king appoint commissioners to meet within a limited time and mark out the dividing line. Thereupon the Privy Council advised the king to appoint commissioners, and suggested that, in the running of the line, due care should be taken that private property was not affected.[3] On the 22d of January, 1736, his Majesty in council signified his approval of what the Privy Council said and assigned to a sub-committee the task of recommending suitable persons to act as commissioners. On the 1st of April the committee presented for approval the names of the five eldest councillors in each of the provinces of New York, New Jersey, Nova Scotia and Rhode Island. The following October all of these were formally approved except one, who appeared to be interested in the Massachusetts colony.[4] The chief points of the commission having been agreed upon, directions were given to the attorney and solicitor-general, in February, 1737, to draw up the necessary commission agreeable

[1] *New Hampshire State Papers*, vol. xix, p. 252.

[2] *Ibid.*, vol. xix, pp. 257, 258, June 5, 1735.

[3] *Ibid.*, vol. xix, p. 261.

[4] *Ibid.*, vol. xix, pp. 262, 265.

thereto, and at the same time orders were issued to the Board of Trade to write circular letters on the subject to the governors of those colonies from which the commissioners were chosen, while letters were also ordered sent to the governor and commander-in-chief of the provinces of Massachusetts and New Hampshire. Finally, on the 9th of April, 1737, the commission passed the seals.[1] This provided that the twenty commissioners therein designated, any five of whom were sufficient for a quorum, should meet at Hampton on the 1st of the following August to determine the lines.

While the agents for the two provinces had been engaged in protecting and furthering the interests of their respective governments before the various boards and committees in England, Massachusetts had been granting out the lands west of a line drawn three miles from the eastern bank of the Merrimac. This appears to have been done with the view of strengthening her claim by actual occupation and possession of the territory in dispute. The pretext used, however, was that the towns were granted to protect the frontier. Many petitions having been preferred for township grants in the unappropriated parts of the province, the General Court at last resolved to make grants on an extensive scale. It was proposed to lay out not single towns as had hitherto been the custom, but lines of towns, and these, too, were to be so situated as to most effectually protect and cover the frontier. In 1726 the lower house of the Massachusetts legislature voted that the land from Northfield on the Connecticut to Dunstable on the Merrimac, and that from Dunstable north on both sides of the Merrimac to Penacook should be carefully viewed and sur-

[1] *State Papers*, vol. xix, pp. 270, 274, 280. 18 of those named had been recommended by the subcommittee of the council.

veyed.[1] On account of the opposition of the other house, the matter was deferred until the following year, when it was again brought before the court. In addition to the two lines of towns previously proposed, it was now proposed that there should also be a line surveyed in Maine between Berwick on the Newichwannock river and Falmouth in Casco Bay.[2] The lower house then desired not only that townships equivalent in area to six miles square should be laid out along these lines, but that committees should be appointed with power not only to admit settlers and lay out the lands within the different townships, but to forward the settlement of the same. To this the council would not agree, but it concurred so far as to have the lands surveyed and a plan returned showing the nature, character and quality of the land in the several lines.[3] Towns in these lines were afterwards disposed of singly and at different times.

In January, 1736, the General Court passed an act providing that a strip of land at least twelve miles wide, extending from the northwest corner of Penacook to the great falls of the Connecticut, should be divided up into as many townships of the contents of six miles square as the land would permit, and that another line of towns should be laid out from the falls down the eastern side of the Connecticut to what is now Winchester. In the same act a committee was named not only to survey the land and grant out the townships to such as had petitioned for grants, but also to supervise the settlements and see that the conditions of the grant as specified in the act were fulfilled.[4] Accord-

[1] *State Papers*, vol. xxiv, pp. 749, 751, 755.

[2] *Ibid.*, vol. xxiv, pp. 757, 758. [3] *Ibid.*, vol. xxiv, p. 761.

[4] *Ibid.*, vol. xxiv, pp. 761, 765. There were to be 60 grantees to a township.

ing to the survey that was made, the land between the rivers was divided up into nine townships so arranged as to form a double row, while that from the falls to Winchester was divided into four townships.[1] Accordingly, that number of townships was granted, each receiving a number instead of a specific name to distinguish them one from the other. Those between the rivers were numbered from 1 to 9 while those on the Connecticut were numbered from 1 to 4. The former corresponded roughly, in the order named, to the present towns of Warner, Bradford, Acworth, Alstead, Hopkinton, Henniker, Hillsborough, Washington and Lempster, while the latter corresponded to the towns of Chesterfield, Westmoreland, Walpole and Charlestown. These towns, along with those which had been previously surveyed and granted, formed a rather irregular quadrilateral the corners of which took in the towns of Northfield, Dunstable, Boscawen and Charlestown, and had all been actually settled and defended, they would have formed an admirable line of defence against the enemy in the next war.

Although Massachusetts did not lay out any more towns in tiers, she made several other collective grants. Sometimes the townships so granted were laid out in groups or clusters; at other times, wherever suitable land could be found. Generally they were granted to those who had taken part in some war or particular campaign in past wars. Thus, to the heirs of the men who fought in King Philip's War in 1675, she voted at first two towns, but when it was found that there were 840 claimants, 5 others were granted, one township being granted to every 120 persons. Later, 232 more claimants were found, enough for two more townships. All were generally known as the Narragansett towns, and each was distinguished by a particular number. Numbers 3, 4 and 5

[1] *State Papers*, vol. xix, pp. 766, 767.

were within the present limits of New Hampshire, and correspond to the towns of Amherst, Bedford and Goffstown.[1] To the survivors of the Canada expedition of 1690 and to the heirs of those that had since died a large number of townships were given, seven of which later fell within New Hampshire. These are the present towns of Dunbarton, Lyndeborough, New Boston, Richmond, Rindge, Salisbury and Weare. As a great many of the grantees of a township were often inhabitants of a single town in Massachusetts, these townships were usually known by the name of such a town with the word Canada added.[2] Thus, one was called Salem-Canada, another Rowley-Canada, a third Beverly-Canada, etc. Then, too, there were three townships laid out on the Ashuelot river, all three being granted in 1733. They comprise the towns of Winchester, Swanzey and Keene.[3] Thus did Massachusetts hurriedly grant out the lands which she claimed in what is now the state of New Hampshire. As quite a number of people made settlements by virtue of these grants, Massachusetts' claim to the territory was thus fortified by occupation and possession. By the time, therefore, when the commissioners met at Hampton to take under consideration the question of fixing the boundaries between the two provinces most of the land west of a line drawn three miles east of the Merrimac had been disposed of by the Bay government.

In the commission appointing the commissioners, it was provided that each province should appoint two public officers, upon either of whom or at whose place of address all notices, summons and the final judgment of the commis-

[1] *State Papers*, vol. xxiv, p. 457; vol. xxv, p. 30; vol. xxiv, pp. 794, 799, 807, 819. Bodge, *King Philip's War*, p. 406.

[2] *State Papers*, vol. xxiv, pp. 78, 172, 215, 272, 282, 287.

[3] *Ibid.*, vol. xxiv, pp. 152, 318, 345, 772, 773.

sioners should be served or left. Furthermore, each province was to submit to the commissioners in writing a plain and full statement of their demands or pretensions, describing where and in what places the northern and the southern boundaries of New Hampshire ought to begin, what courses they ought to follow, and how far they ought to run. If either province failed to send to the commissioners at their first meeting the names and addresses of the two public officers or neglected to present at that meeting a full statement of their case, it was stipulated that the commissioners should proceed *ex parte*. After rendering their decision, the commissioners were to adjourn for at least six weeks, so that either province that considered itself aggrieved might have time to enter and perfect its appeal.[1]

While the New Hampshire legislature was in session in March, 1737, Governor Belcher communicated to the two houses a copy of the royal orders of the previous month.[2] After considering the matter, the lower house, on April 1st, voted to have a committee appointed to prepare such witnesses, pleas, allegations, papers and records as were necessary to present to the commissioners, and authorized the committee to draw upon the treasurer for such money as might be needed both for these purposes and for the reception and entertainment of the commissioners. A committee was accordingly appointed by both houses and approved by the governor.[3] After this was done, the legislature was prorogued to the 6th of July. A few weeks after the prorogation had been ordered the governor received letters from the home government, directing him to recommend to the respective assemblies of the two provinces that they ap-

[1] *State Papers*, vol. xix, p. 275.

[2] *Provincial Papers*, vol. iv, pp. 721, 861. March, 1736–7.

[3] *Ibid.*, vol. iv, p. 732.

point the two public officers and draw up a full statement of their claims.[1] Notwithstanding this, Belcher, by a proclamation dated the 20th of June, further prorogued the assembly to the 4th of August, that is to say, three days after the date set in the commission for the first meeting of the commissioners; and as if that was not enough, he further prorogued it without doing business until the 10th of the same month.[2]

As the legislature was unable to take any action in the matter while under prorogation, the committee which had been appointed the previous April did what they could to prevent the case being considered *ex parte*. Accordingly, they chose the two public officers as required and prepared a full statement of the claims which New Hampshire had to urge in her behalf. On the 1st of August the committee presented to the commissioners the names of the two public officers and also a full statement of New Hampshire's claims, both of which the commissioners saw fit to receive.[3] Respecting Belcher's conduct in thus proroguing the assembly until after the 1st of August the Lords in Council later said that, in so acting, Belcher had been guilty of partiality towards Massachusetts, "thereby endeavoring to frustrate the intention of his Majesty's commission."

Of the two boundary lines which the commissioners had to determine, the one which bounded New Hampshire on the south was the more difficult of determination. The claims of the two provinces as to where and how that line should be run varied widely. New Hampshire, on the one side, insisted that it should begin at a point on the coast

[1] *Provincial Papers*, vol. iv, pp. 863, 864; vol. vi, p. 922.

[2] *Ibid.*, vol. iv, pp. 734, 735. On August 10th Belcher first informed the assembly that they should appoint the two public officers required.

[3] *New Hampshire State Papers*, vol. xix, pp. 281, 282.

three miles north of the middle of the channel of the Merrimac river "where it runs into the Atlantic Ocean" and run from that point west up into the mainland in the direction of the South Sea until it met with his Majesty's other governments.[1] Massachusetts, on the other side, contended that it should begin at the sea three miles north of the Black Rocks at the mouth of the Merrimac river "as it emptied itself into the sea sixty years ago," from which point it should run parallel with the river as far north as the crotch or parting of the stream in the present town of Franklin, from which point it should be continued three miles due north to a certain tree, called Endicott's tree, whence it should run due west to the South Sea.[2] Massachusetts asserted that the king in granting her the charter of 1691 intended to convey to her the same territory as was conveyed in the original charter. Her boundary on the north, therefore, must be the same as described in the latter charter. As determined by the English judges in 1677 and confirmed by his Majesty the same year, this corresponded, it was said, with what she now claimed and insisted upon as the northern limits of her patent. According to the words of the original charter, the Massachusetts boundary extended as far as "three English miles to the northward of the . . . Merrimac river or to the northward of any and every part thereof." In the charter of 1691, however, the words "to the northward of any and every part thereof" were omitted.[3] The main point, therefore, which puzzled the commissioners was whether the charter of William and Mary granted to Massachusetts all the lands which were granted to her in the original charter. If it did,

[1] *New Hampshire State Papers*, vol. xix, p. 283.

[2] *Ibid.*, vol. xix, p. 291.

[3] *Ibid.*, vol. xix, pp. 335, 342.

then the Bay's claim was valid and ought to be sustained. Apart from this question, there were other important questions which the commissioners had to consider before fixing upon the line. Whether, for instance, the Merrimac then, in 1737, emptied itself into the sea at the same place as it did sixty years before; whether, at the time the first charter was granted, it bore the same name from the sea up to the confluence at Franklin of the Pemigewasset and Winnepesaukee rivers; and whether it was possible to draw a line parallel with the river at a distance of three miles north of every part thereof when the course of the stream in some places was from north to south.

Respecting the northern boundary of New Hampshire, the dispute arose over the interpretation to be given the word "northwestward." Massachusetts claimed that it meant that the line from the furthest head of the Newichwannock river should run due northwest, while New Hampshire asserted that it meant that the line should run a few degrees west of north, the word "'northwestward' being equivalent to 'northwesterly.'" [1]

After taking the respective claims under consideration, the commissioners, on September 2d, rendered a decision which, so far as the southern boundary line was concerned, was evasive. The only thing which they really decided respecting that line was that the point on the coast where the line began should be three miles north of the south side of the Black Rocks at low-water mark. From that point the line was to run as Massachusetts contended it should run, provided, however, the king decided that the charter of 1691 granted to that province all the lands conveyed by the charter of Charles I. If the king decided against the Bay

[1] *New Hampshire State Papers*, vol. xix, pp. 284, 291, 298.

on this question, then the commissioners declared that the line should begin at the same point on the coast but run due west until it met his Majesty's other governments. The dispute over the northern line, the commissioners decided in favor of New Hampshire, declaring that the line should run from the furthest head of the river "north two degrees west." From the ocean to the source of the river they said the boundary should run in the middle of the stream.[1] The cost and charge of taking out the commission, entertaining the commissioners and paying the public officers the commissioners declared should be borne equally by the two provinces. After the decision was delivered to the public officers an adjournment was taken until the 14th of October, in order that the provinces might have time to consider and prepare any appeals they might care to make.[2]

On the same day, and before a copy of the commissioners' decision was received, Governor Belcher prorogued the legislature of New Hampshire to the 10th of October. When the two houses met on that day the council immediately adjourned, being averse to making any appeal. The lower house, which passed a vote of exceptions to the commissioners' judgment, was constrained to ask the latter to accept that vote as the appeal of the province, although it had not been concurred in by the council or approved by the governor.[3] Although Massachusetts protested against this being received for the reason that it was not the act of the entire legislature, the commissioners saw fit to accept it.[4] The reason later assigned for the council's conduct on this occasion was that, as the commissioners' decision was spec-

[1] *New Hamphire State Papers*, vol. xix, p. 391.

[2] *Ibid.*, vol. xix, p. 392. [3] *Provincial Papers*, vol. iv, p. 745.

[4] *New Hampshire State Papers*, vol. xix, p. 399.

ial, there was no need of making any appeal, because the king would have to decide the matter himself anyway irrespective of whether an appeal was lodged against the judgment or not. Furthermore, it was argued that the committee appointed by the assembly in April had full power to act also in the recess of the legislature.

Massachusetts, on the other hand, presented her appeal duly authenticated and in proper form, for after the commissioners had rendered their decision on September the 2d, the General Court had been kept in session several days, during which time the commissioners' judgment was fully considered and an appeal agreed upon. The Court was then adjourned to the 12th of October, so that ample time was allowed to perfect the appeal, which was approved by the entire legislature. After receiving the appeals from both provinces, the commissioners adjourned and submitted the matter to the king for determination.

Although the house of representatives in New Hampshire proposed that money should be raised by the province to prosecute the appeal in England, the council could not be prevailed upon to concur in such a proposal. No money, therefore, could be obtained for that purpose. Nevertheless the agent of the province in England was instructed by the house to press for a speedy determination of the boundary controversy. The following month the governor dissolved the assembly, and did not call another until almost a year had passed,[1] thus preventing the house from taking any further action in the matter.

The council's conduct and Belcher's partiality towards Massachusetts had greatly strengthened the party that was working to have the lines settled and a separate governor appointed for New Hampshire. The case against the gov-

[1] *Provincial Papers*, vol. v, p. 9.

ernor was now pressed with considerable vigor, and many petitions were forwarded to England praying for Belcher's removal and for the appointment of a separate governor for New Hampshire. The agent for the province in England at this time was John Thomlinson, a very able man and one who was thoroughly acquainted with the province. He was more than a match for the Massachusetts' agents and completely outgeneraled them. He had first been named by John Rindge when the latter returned to New England, and was later designated by the house of representatives to act in behalf of the province. He continued to do all in his power to have the boundary controversy promptly determined by the king, but the obstacles which the Bay government placed in the way caused considerable delay. As usual, Massachusetts adopted the policy of procrastination. On one pretence or another, the matter was constantly postponed and decisive action deferred, but Thomlinson's remarkable ingenuity, earnestness and perseverance at last caused the king to decide the matter in New Hampshire's favor.

In her vote of exceptions to the commissioners' judgment, New Hampshire claimed that the point on the coast designated as the starting place of the southern boundary was too far north, inasmuch as the Black Rocks were not situated in the middle of the channel of the Merrimac, but in a bay three-fourths of a mile north of the river's mouth. Furthermore, she asserted that a line parallel with the river was not only impracticable but founded on the old Massachusetts charter which had been vacated, and, if practicable, it ought not to go any further than the river held a westerly course. She also objected against the line on the north running through the middle of the Piscataqua river, claiming that the grant to Gorges did not convey any part of the river, the jurisdiction of which had always been in the

possession of New Hampshire and never claimed by Massachusetts.[1]

In her appeal, Massachusetts insisted that the southern boundary of New Hampshire should be the line to which she had laid claim and that the northern boundary from the head of the Newichwannock river should run due northwest instead of two degrees west.

According to the final decision rendered by the king in council on March 5th, 1740, those parts of the commissioners' decision respecting the northern boundary and the payment of the expenses were affirmed. In arriving, however, at a decision respecting the southern boundary no attention seems to have been paid to the question whether or not the charter of 1691 granted all the lands comprehended in the original one. The matter appears to have been decided on principles of justice and equity. It was stated that, as the course of the river at the time the grant was made, though unknown, was supposed to be from east to west, it would be equitable to both parties to have the line parallel the river as far as it held a westerly course. Accordingly, it was determined that the boundary should "be a similar curved line pursuing the course of the Merrimac at three miles distance on the north side thereof, beginning at the Atlantic Ocean and ending at a point due north of Pawtucket Falls, and a straight line drawn from thence due west till it meets with his Majesty's other governments."

In consequence of this decision, New Hampshire received much more land than she had seen fit to claim. The people of the province, therefore, were highly elated at the successful issue of the long and tiresome controversy. The

[1] *New Hampshire State Papers*, vol. xix, p. 395; *Provincial Papers*, voil. v, p. 746.

people of Massachusetts, on the other hand, were in general dissatisfied with the decision and regarded it as unjust to that province. Steps were, therefore, taken with the view of having the matter re-heard and the towns which were cut off by the line re-annexed to that government. Accordingly, numerous petitions to this effect were laid before the authorities in England, but all the attempts made to have the decision modified failed.

Although both provinces were commanded to join in appointing surveyors to run and mark out the boundaries in accordance with the royal decision, Massachusetts failed to comply. New Hampshire, therefore, had to assume the entire responsibility. In 1741 she appointed three surveyors to run the lines, namely, George Mitchel, Richard Hazen and Walter Bryant. The first marked out the similar curved line paralleling the river as far as the point three miles north of Pawtucket Falls, from which place Hazen ran the line west, while Bryant proceeded to run the northern boundary from the head of the Newichwannock river; but when he had surveyed about thirty miles of it he was prevented from going any further both on account of the ice breaking up in the rivers and ponds and by the presence of some Indians in the vicinity.[1]

As finally determined by the king in 1740, the southern boundary of New Hampshire west of the Merrimac began at a point on the river three miles north of Pawtucket Falls and ran due west until it met his Majesty's other governments. In accordance with this determination, Richard Hazen ran the line in 1741. As early as 1724, however, the Bay government had built a fort in what is now Brattleboro, Vermont, which, with some others that were established within the present confines of Massachusetts, was intended to pro-

[1] *New Hampshire State Papers*, vol. xix, pp. 484, 485, 505.

tect the colony's western frontier. This post, which was called Fort Dummer in honor of the lieutenant-governor, was, in 1741, still in her possession. As it was north of the line then run, and consequently no longer within her jurisdiction, she called upon New Hampshire to provide for its support and maintenance, but this the latter refused to do. Thereupon complaint was made to the home government, as a result of which an order in Council was issued in 1744 commanding New Hampshire to take possession of the place and provide for its defence for the reason that it was now within the limits of that province. Again, in a report drawn up in 1752 by the attorney and the solicitor general of England respecting some lands which had been originally granted by Massachusetts to Connecticut and then sold by the latter to private individuals, it was stated that the lands in question had, by the determination of the boundary line, become a part of New Hampshire.[1] From these two cases it is evident that the authorities in England then regarded the territory west of the Connecticut as within the limits of New Hampshire.

Soon after the close of King George's War many applications were made to Governor Wentworth for grants of land in various parts of the province. As some of the tracts petitioned for lay beyond the Connecticut, near what was then believed to be the eastern boundary of New York, Governor Wentworth, in November, 1749, informed Governor Clinton of that province about the matter and requested him to state how far north of Albany New York extended and what the eastern boundary was, north of the Massachusetts line.[2] After several months had elapsed, a letter was received, which was reinforced by an opinion

[1] O'Callaghan, *Documentary History of New York*, vol. iv, p. 547.

[2] *Ibid.*, vol. iv, p. 531.

from the council of New York, asserting that that province was bounded on the east by the Connecticut river, inasmuch as the letters patent from King Charles II to the Duke of York expressly granted to the latter "all the lands from the west side of Connecticut river to the east side of Delaware Bay." Thereupon Wentworth informed Clinton that this reply "would have been entirely satisfactory . . . had not the two charter governments of Connecticut and the Massachusetts Bay extended their bounds many miles to the westward of the said river." He then declared that, prior to the receipt of his excellency's letter, he had been advised by the council of his own province that New Hampshire had an equal right to claim as far west as the chartered governments, and that in pursuance of such advice he had issued a grant for a township due north of the Massachusetts line and twenty-four miles east of Albany.[1] "Although I am prohibited," he said, "from interfering with his [Majesty's] other governments, yet it is presumed that I should strictly adhere to the limits prescribed therein, and I assure you that I am very far from desiring to make the least encroachment or set on foot any dispute on these points. It will, therefore, give me great satisfaction if, at your leisure, you can inform me by what authority Connecticut and the Massachusetts government claimed so far to the westward as they have settled; and in the meantime I shall desist from making any further grants on the western frontier of my government that may have the least probability of interfering with your government."

In reply Governor Clinton declared that the claim of Connecticut was founded upon an agreement which was

[1] O'Callaghan, *op. cit.*, vol. iv, pp. 533, 536. In honor of the governor this town was called Bennington. The grant was dated Jan. 3, 1749.

made with the government of New York about the year 1684 and confirmed later by William III. As for Massachusetts, however, it was presumed that she had at first simply possessed herself of the lands by intrusion, and continued in possession through the negligence of the New York government. Respecting the new township which had been granted, he said that there was reason to apprehend that the lands embraced within it had already been granted by his government. In justice, therefore, to the original grantees, the later grant should, if possible, be recalled. Otherwise he would be obliged to send a representation of the matter to the king.[1]

Being unanimously of the opinion that the province should not enter into any controversy with New York respecting its western boundary until his Majesty's pleasure was further known, the council of New Hampshire advised the governor to lay the facts in the case before the king and acquiesce in whatever determination the latter should make. Accordingly, Wentworth acquainted Clinton with the council's sentiments, and at the same time explained the circumstances attending the grant in question. "When I first wrote you on this subject," said he, "I thought I had given sufficient time to receive an answer to my letter,[2] before I had fixed the day for passing the grant referred to; . . . and, as the persons concerned therein lived at a great distance, it was inconvenient for them to be delayed beyond the appointed time. Moreover, I was not apprehensive any difficulty could arise by confining myself to the western boundaries of the two charter governments. Accordingly I passed the patent about ten days before your favor . . . came to hand. There is no possibility of vacat-

[1] O'Callaghan, *op. cit.*, vol. iv, p. 534.

[2] *I. e.*, the letter of November 17, 1749.

ing the grant as you desire; but if it falls by his Majesty's determination in the government of New York, it will be void, of course. I shall be glad," he continued, "[if] the method I have proposed may be agreeable to your province, and if submitting the affair to his Majesty meets with your approbation, I shall, upon receiving an answer, lose no time in transmitting what concerns this province to the proper offices." [1]

After a little more than a month had elapsed, word was received from Governor Clinton that the council of his province deemed it highly expedient to lay the matter before the king, and believed it would be for the mutual advantage of both governments to exchange copies of each other's representations on the subject.[2] Although Governor Wentworth signified his approval and acceptance of the council's suggestion, it appears from what the council of New York said in 1753 that he failed to keep his promise respecting the exchange of their representations.[3]

After the two governments had agreed to submit their respective claims to the home government, and during the time when the case was being considered in England, Governor Wentworth, notwithstanding the claim of New York, made further grants west of the Connecticut, and this he continued to do until the French and Indian war broke out in 1754.[4]

During the war the debatable ground west of the Connecticut was crossed and recrossed many times by the troops of the various New England colonies. As a result,

[1] O'Callaghan, *op. cit.*, vol. iv, p. 535.

[2] *Ibid.*, vol. iv, p. 536. [3] *Ibid.*, vol. iv, pp. 537, 552.

[4] Slade, *Vermont State Papers*, pp. 13–25. During this period 15 other grants were made. None, however, were as far west as Bennington.

the character of the country became better known and its adaptability for settlement was more fully appreciated. With Canada in the hands of the English, the northern frontiers of the colonies were forever relieved of the fear of being attacked by the French, while a lasting peace with the Indians seemed assured, for the savages were no longer under the domination of the French, who in the past had been chiefly responsible for most of the slaughter, desolation and suffering which had been caused by the Indians in their many raids upon the exposed and often defenceless settlements.

Without waiting for the king to officially determine the western boundary of the province, Governor Wentworth, as soon as the English were in control of Canada, began again to grant out land in the disputed territory west of the Connecticut. In order to accommodate the numerous applicants, surveys were made on quite an extensive scale. Thus, along the river for a distance of some sixty miles three rows of townships were laid out on each side of the stream. Furthermore, from a line drawn approximately twenty miles east of the Hudson river, to which point New Hampshire, like Massachusetts, claimed, three rows of townships, including some of those which had already been granted, were mapped out. These extended from the Massachusetts boundary north to the neighborhood of Poultney. From this point north along the eastern shore of Lake Champlain to the vicinity of the present city of Burlington there were, for the greater part of the way, two tiers of townships. These townships were rapidly granted out, no less than sixty grants being issued in the year 1761.[1]

In order that the rights of New York to the territory in controversy might be effectively asserted and the jurisdic-

[1] Slade, *op. cit.*, pp. 13–15; *Doc. Hist. of New York*, vol. iv, p. 706.

tion of that province over the same fully maintained, and in order that persons might at the same time be officially warned against purchasing any land west of the Connecticut on the strength of a charter granted by New Hampshire, Lieutenant-Governor Colden, late in December, 1763, issued a proclamation reasserting New York's claim to the territory west of the river.[1] Moreover, all judges and civil officers of that government residing within the same were commanded to continue to exercise jurisdiction as far east as the banks of the Connecticut, which were declared to be "the undoubted eastern limits of New York, notwithstanding any contrariety of jurisdiction" claimed by New Hampshire or any grants of land made by the latter westward of that stream. Furthermore, the sheriff of Albany county was enjoined to return the names of all persons who held possession of any lands under grants from New Hampshire, so that they might be proceeded against according to law.

To the end that the grantees then settled, or about to settle, upon the lands patented by New Hampshire might not be intimidated or in any way hindered or obstructed in the improvement of their lands, and in order that the jurisdiction of the latter province might be maintained as far west as the grants ran, Governor Wentworth, in March, 1764, issued a counter proclamation. In this he encouraged the grantees "to be industrious in clearing and cultivating their lands agreeable to their respective grants," and required all civil officers within the province not only to be diligent in exercising jurisdiction as far west as the grants extended, but to deal with all persons who "may presume to interrupt the inhabitants or settlers on said lands as to law and justice doth appertain."[2] In this document the governor also

[1] *Doc. Hist. of New York*, vol. iv, p. 588. Dec. 28, 1763.
[2] *Ibid.*, vol. iv, p. 570. March 13, 1764.

asserted that it was very clear that New Hampshire, by virtue of the decision determining the boundaries between herself and Massachusetts, had a legal right to extend her limits as far west as the latter did. Further than that she did not claim. But New York, on the other hand, pretended to claim to the very banks of the Connecticut, although she had never laid out or settled a single town in that part of the country since her existence as a government. When she did make the Connecticut river the actual boundary between herself and the colonies of Massachusetts and Connecticut, it would be time enough for her to assert her right to the territory on the strength of the letters-patent granted by Charles II to his brother, the Duke of York. The boundaries of New York on the north were, he declared, unknown; but as soon as the crown determined them, his government would pay a "ready and cheerful obedience thereunto," not doubting that all such grants as were made by New Hampshire, the conditions of which were faithfully fulfilled by the grantees, would be confirmed to the latter if it should be his Majesty's pleasure to alter the jurisdiction. As Colden's proclamation might possibly affect and retard the settlement of the lands granted by New Hampshire, the settlers and grantees were assured that the patent to the Duke of York was obsolete and could "not convey any certain boundary to New York that can be claimed as a boundary, as plainly appears by the several boundary lines of the Jerseys on the west and the colony of Connecticut on the east, which are set forth in the proclamation as part only of the land included in the said patent to the Duke of York."

In the meantime, Lieutenant-Governor Colden had fully acquainted the Board of Trade with the facts in the case.[1]

[1] *Doc. Hist. of New York*, vol. iv, p. 560 *et seq.*

After giving a résumé of what had transpired between the two governments and refuting, with the same arguments and statements as had previously been advanced, New Hampshire's claim to the land east of a point twenty miles from the Hudson river, he said that it would be much more convenient for the settlers if the lands in question were put under the jurisdiction of New York, because the trade of that section would probably center at Albany, inasmuch as the transportation of goods to that city, which was on a river navigable for ships of considerable burden, would be much easier than to the ports of New Hampshire. Besides that, the inhabitants would be likely to find that city a better market for their produce. Then, too, the revenue of the crown would be much greater, as the quit-rent in New Hampshire was but one shilling for every hundred acres whereas in New York it was fixed at two shillings and sixpence. This, he thought, was the one thing which would cause the settlers to prefer to remain under the jurisdiction of New Hampshire.[1] Furthermore, he declared that a great number of reduced officers, who had served in the last inter-colonial war, had petitioned for grants of land, but that the government found it impossible to accommodate them as there was not enough land in the province clear of dispute and not reserved to the Indians unless the section claimed by New Hampshire was confirmed to New York. These officers, he asserted, absolutely declined to make application to New Hampshire for any lands west of the Connecticut.

Upon receiving a copy of Governor Wentworth's proclamation, Colden forwarded it to the Board of Trade, along with a letter[2] stating that "the numerous grants of town-

[1] *Doc. Hist. of New York*, vol. iv, p. 568.

[2] *Ibid.*, vol. iv, p. 572.

ships by New Hampshire on the west side of Connecticut river in so short a time since the last peace cannot be with any view in the persons who have received the grants to settle and improve those lands, but with a sinistrous view in a few persons to put large sums of money in their pockets by jobbing and selling of rights through all the neighboring colonies, as appeared to the council of this province by several persons going about this province, New Jersey and Connecticut hawking and selling their pretended rights to great numbers of ignorant people at low rates and defrauding them of large sums of money." That the grantees did not intend to settle and improve the land themselves appeared likewise, he declared, "by several advertisements and by the newspaper in which Governor Wentworth's proclamation is published." "I am persuaded," he says a little further on, "that upon your Lordship's mature consideration of this matter, it will evidently appear on the principles of justice, policy and public utility that the jurisdiction of New York ought to extend to Connecticut river, as the Duke of York's patent does. The commerce of the whole country on the west side of Connecticut river is by Hudson's river, and the produce of the northern part of that country must be transported by that river." "Any delay at this time," he concluded, "will certainly be prejudicial to his Majesty's interest, prevent the benefit designed for the army in America, and the settling of that part of the country, besides the inconveniences and perhaps mischiefs which may happen by the different claims of jurisdiction."

On July 20th, 1764, the king finally decided the boundary dispute in favor of New York, by declaring "the western banks of the river Connecticut from where it enters the province of the Massachusetts Bay as far north as the forty-fifth degree of north latitude to be the boundary

line between the said two provinces of New Hampshire and New York." [1]

From the time that the first grant was made in 1749 until this decision was rendered in 1764 not less than 131 townships were granted by Governor Wentworth in the territory west of the Connecticut. Most of these had been granted since the subjugation of Canada, and almost half in a single year. Besides these patents, the governor, by virtue of a royal proclamation, dated October 7th, 1763, also granted out six tracts of land, varying from two to three thousand acres each, to as many reduced officers. The charters, embodying the various town grants, were similar in form to those issued by the governor when he granted out new townships east of the Connecticut, and the terms and conditions of settlement, as well as the reservations mentioned in them, were generally the same. Likewise the quit-rent in all was fixed at one shilling for every hundred acres.[2]

Although Governor Wentworth remonstrated against the change of jurisdiction, he was finally prevailed upon to issue a proclamation "recommending to the proprietors and settlers due obedience to the authority and laws of the colony of New York." In view of the position later taken by the New York officials with reference to the claims of those holding under grants from New Hampshire, the latter resolved to resist the pretensions of the New York government. As a result a controversy arose which continued with remarkable vigor until after the Revolution.[3]

[1] *Doc. Hist. of New York*, vol. iv, p. 574

[2] *New Hampshire State Papers*, vol. x, p. 204; vol. xxvi, preface x; Slade, *op. cit.*, pp. 13–16. The number 131 does not include the regrants.

[3] For a detailed account of this controversy which at one time threatened to produce civil war in and disrupt New Hampshire, but which

During the time when the commissions of Allen and Dudley were in force the growth of the province was very slow. The original settlements became more and more populous, but only a few of the inhabitants pushed forward into the interior and opened up the country there. The uncertainty which existed concerning titles to land doubtless prevented many people from taking up a residence within the province; but the most important factor contributing to so slow a growth is to be found in the fact that during almost that entire period the inhabitants were involved in hostilities with the French and Indians. For the greater part of the time, therefore, the establishment of new settlements was impracticable. The only township established in the interior was that of Kingston, which lay to the west of Hampton. This was granted to some petitioners from that place in 1694 while there was a truce with the Indians.[1] The year before this a new township, called New Castle, was created out of those parts of Portsmouth known as Great Island, Little Harbor and Sandy Beach.[2] Major Vaughan, one of the councillors, objected to the lieutenant-governor passing this grant, on the ground that the royal commission only vested the executive with power to grant entirely new townships and gave him no right whatever to subdivide the old ones.[3] In 1704 another slice of territory was set off from Portsmouth and made a separate parish by the name of

finally resulted in the establishment of a new state, namely Vermont, see *Doc. Hist. of New York*, vol. iv, pp. 577, 587, 593 *et seq.*; Slade, *op. cit.*, pp. 21 *et seq.*; *Provincial Papers*, vol. x, *passim*; Allen, *Hist. of Vermont*, *passim*; Sanderson, *Hist. of Charlestown*, *passim*.

[1] *Provincial Papers*, vol. ii, pp. 107, 132; vol. iii, pp. 16, 19; *New Hampshire State Papers*, vol. xxv, p. 179. In the charter, the name is spelled Kingstown.

[2] *Ibid.*, vol. xxv, 361; *Provincial Papers*, vol. ii, pp. 92, 93, 95.

[3] *Ibid.*, vol. ii, p. 107.

Greenland, but full town privileges were not conferred upon it for a great many years.[1] In 1692 the council passed an order that the inhabitants of that part of the Squamscott patent, which later received the name of Stratham, should be rated by the selectmen of Exeter instead of being left with Hampton, to which they had formerly been connected.[2] Eventually this district became a separate township, called Stratham.[3] In December, 1715, Star Island, the most important island of the Isles of Shoals, was incorporated under the name of Gosport.[4] In 1695 the inhabitants of that part of Dover known as Oyster river petitioned for the grant of a township, and four years later they preferred another petition, desiring to be set off as a parish by themselves.[5] Neither of these petitions, however, were favorably considered, and it was not until May, 1732, that the district was incorporated.[6]

With the close of Queen Anne's war and the restoration of peace throughout the continent the danger of Indian raids was once more removed. Consequently, the interior again offered a fair field for the establishment of new settlements. As a result of the favorable reports and encouraging offers which had been received, a considerable number of Scotch-Presbyterians in the north of Ireland resolved to emigrate to New England. In the summer of 1718 a number of them arrived in Massachusetts. Most of these soon

[1] *New Hampshire State Papers*, vol. xxv, p. 59.

[2] *Provincial Papers*, vol. ii, p. 85.

[3] *Ibid.*, vol. ii, pp. 688, 691; vol. iii, pp. 406-7; vol. ix, p. 778. It became a town, January, 1716.

[4] *New Hampshire State Papers*, vol. xxiv, p. 149.

[5] *Provincial Papers*, vol. ii, p. 171; vol. ix, p. 234; *New Hampshire State Papers*, vol. xxvii, p. 215.

[6] *Ibid.*, vol. xxiv, p. 710. Incorporated as Durham. *Provincial Papers*, vol. iii, pp. 618, 620.

afterwards settled upon lands offered by Massachusetts, but those under the charge of the Rev. James MacGregor, not finding a place to their liking, deferred for a time the establishment of a permanent settlement. Finding, in the spring of 1719, a suitable tract of unappropriated land some distance north of Haverhill, they established themselves upon it, and so rapidly did others join them that in six months there were no less than seventy families upon the place. A month after the settlement was started [1] they petitioned the General Court to be formed into a township, if the lands were found to be within the limits of that government. As this petition was rejected, they applied, in September, to New Hampshire for a charter of incorporation.[2] As it was doubtful whether the executive had the right to grant away the land owing to the fact that it was part of the waste which the heirs of Allen claimed, the lieutenant-governor declined to make them an actual grant, but assured them of the protection of the government and afforded them the benefits of self-government. To protect themselves as far as possible in the ownership of the soil, the settlers obtained from John Wheelwright's descendant an Indian deed for a tract of country ten miles square. As the settlement was situated in a forest abounding in nut trees, it became generally known as Nutfield.[3] Because the land which the settlers had purchased extended on one side to the Merrimac river, part of it lay west of the line which Massachusetts claimed marked the boundary between the two provinces. That province, therefore, protested against the encroachment, and ordered some of the leading men of

[1] May, 1719.

[2] *New Hampshire State Papers*, vol. xxiv, p. 171; *Provincial Papers*, vol. ii, p. 728; vol. iii, p. 707; vol. ix, p. 480.

[3] *Ibid.*, vol. ix, p. 479.

the place to explain why they had proceeded so far in their settlement without the leave or consent of the General Court.[1]

Although several petitions had been preferred to the government of New Hampshire for township grants in the unappropriated parts of the province, the governor, for the reason above mentioned, did not see his way clear to make such grants.[2] Permission, however, was given to some of the intending settlers to settle upon the lands they desired. Finally, however, a way was found by which the difficulty respecting the title was, in a manner, evaded. This was by inserting in the respective charters a saving clause to the effect that the governor, by and with the advice and consent of the council, granted away the lands so far as it was in his power to grant them. Accordingly, in May, 1722, four large townships were granted.[3] These were called Chester, Nottingham, Barrington and Rochester, each joining the other in the order named. Upon a petition preferred by the children of former Governor Allen, a tract of land four miles square west of the Nottingham line was, during the same month, granted to them.[4] At last, on the 21st of June, the people of Nutfield also received a charter formally incorporating them into a township under the name of Londonderry.[5] The townships thus granted formed a rather irregular but unbroken belt in the rear of the old towns, extending across the province in a southwesterly direction from the Salmon Falls river to approximately the

[1] *New Hampshire State Papers*, vol. xxiv, p. 171.

[2] *Provincial Papers*, vol. ii, p. 728; vol. iii, pp. 707, 781, 791, 793, 799.

[3] *Ibid.*, vol. iv, p. 42; *New Hampshire State Papers*, vol. xxiv, pp. 292, 402, 423, 566. Chester charter was dated May 8th, the others May 10th.

[4] *Ibid.*, vol. xvii, p. 755; vol. xxvii, p. 43. This was known as Allenstown.

[5] *Ibid.*, vol. xxv, p. 273; *Provincial Papers*, vol. iv, p. 2.

present limits of the town of Hudson.[1] The western parts of Chester and Londonderry, as well as a good part of what was given to the children of Samuel Allen, lay west of the line claimed by Massachusetts as her boundary.

Although New Hampshire had long been anxious to have her southern boundary officially determined, Massachusetts had always placed obstacles in the way of a fair and impartial settlement of the line. The former repeatedly protested against the Bay's encroachments, but these protests availed nothing. After Penacook, now Concord, was granted in January, 1726,[2] this province again protested. It also appointed a committee to warn the Massachusetts men that the grant was within the limits of New Hampshire and that they should in consequence stop further work on the settlement. The latter, however, refused to heed the warning but proceeded with the work they had in hand. In this they were upheld by the General Court, which continued to receive and consider petitions for township grants in the territory west of a line drawn three miles east of the Merrimac.

At last, New Hampshire decided to grant out all the land west of Nottingham and Barrington as far as the Merrimac river from Chester on the south to the outlet of Lake Winnepesaukee on the north. Accordingly, this was divided into six townships, all of which were granted in 1727. Of these three, namely, Bow, Canterbury and Gilmanton,[3] were large and had a considerable frontage on the Merrimac river; while the others, namely, Barnstead, Chichester and Epsom, were much smaller[4] and at no

[1] See map in *New Hampshire State Papers*, vol. xxiv, p. 622.

[2] 1725–6.

[3] *New Hampshire State Papers*, vol. xxiv, pp. 489, 523; vol. xxv, p. 21.

[4] *Ibid.*, vol. xxiv, pp. 419, 576, 732.

point touched that stream, being comprehended between the first three towns and those of Nottingham and Barrington. The grant of Bow conflicted with that of Penacook and a part of it extended beyond the Merrimac. After these grants were made, a decade elapsed before another township was granted. Then Governor Belcher created, for the benefit of some of his friends, a township, called Kingswood, out of a large tract of country bordering on the southern and eastern sides of Lake Winnepesaukee.[1] After this grant was made there was no unappropriated land in the province south of the lake and east of the Merrimac.

As no other grants were made until after New Hampshire received a separate governor of her own, it will be well to consider the different town charters which had been issued up to that time. No two of these were exactly the same. The earliest charter, issued in 1693 to the inhabitants of the tract therein bounded and described, stated that that tract of land should be a "town corporate by the name of New Castle."[2] To the inhabitants were given, for the use of the general public, all the streets, lanes and highways within the town and "full power, license and authority" to lay out, establish, change and repair all such streets, roads, ferry places and bridges within the same as should be deemed necessary and convenient for the people, but such license was not to be construed to take away any one's rights or property without his consent or some law of the province. Moreover, the inhabitants were to enjoy the free use of the ferry (connecting with the mainland) every Wednesday, which was the day designated for the

[1] *New Hampshire State Papers*, vol. xxv, p. 183. Date of grant, October 20, 1737; vol. ix, p. 456.

[2] *Provincial Papers*, vol. ii, p. 108; *New Hampshire State Papers*, vol. xxv, p. 361.

weekly market, and also on the two days in July which were set aside for the annual fair. Furthermore, they were to have "all issues and profits" accruing to the market and fair, and "all liberties and free customs, privileges and emoluments" belonging or appertaining to the same. On the first Tuesday of every March the inhabitants were to elect "two sufficient and able . . . householders" of the town to act as constables for the ensuing year. After their election, these officers were to present themselves to the next court of Quarter Sessions to take the accustomed oaths appointed by law. At the same meeting the people were also to choose three other householders to officiate as selectmen or overseers of the poor and highways, with "such powers, privileges and authorities as any selectmen or overseers within our said province have and enjoy, or ought to have and enjoy." As an acknowledgment to the government, the town was required to pay a quit-rent of one pepper-corn a year. Such in brief, were the provisions of the first town charter granted by the provincial government. The charter of Kingston, which was granted the following year to Isaac Godfrey, Thomas Philbrook and a number of other gentlemen, was similar to this, but no mention was made of any market day or fair, nor, as the town was in the interior, was anything said about a ferry. The lands of this township were, at the time, uninhabited, being situated in the wilderness some miles west of Hampton.[1]

Unlike the charters of New Castle and Kingston, all those that were issued later provided that certain conditions of settlement should be fulfilled by the persons to whom the lands therein designated were conveyed. In general, dur-

[1] *New Hampshire State Papers*, vol. xxv, p. 180; *Provincial Papers*, vol. ii, pp. 119, 131.

ing the period of which we are speaking, these conditions were, that a certain number of families should be settled upon the grant and a corresponding number of houses built for their accommodation within a specified period. Furthermore, each family was required to clear a few acres of land and contribute to the erection of a meeting-house within a designated number of years.[1] In all cases it was provided that, if an Indian war broke out before the expiration of the time allowed for the fulfilment of these conditions, as many more years were to be allowed the grantees as were given them in the charter for the settlement of the requisite number of families within the township. In all but two of the charters—those of Barrington and Epsom—it was stipulated that each proprietor should pay his proportion of the town charges, and that any who failed to comply with the terms of the charter within the time limited should forfeit his share or right in the town to the other proprietors.[2] In the charter of Kingswood it was further stipulated that any proprietor who neglected or refused to pay his share of such sums as were voted, in any proprietors' meeting, to forward the settlement of the place, should have so much of his land sold at public auction as would amount to five times the sum assessed against him, the proceeds from the sale, after deducting the charges, to be put into the treasury of the proprietary.[3] Owing to the dispute between Allen and the inhabitants over the ownership of the soil of the province, it was stated in all the charters that the lands therein defined and bounded were

[1] *New Hampshire State Papers*, vol. xxiv, pp. 419, 423, 489, 524, 567, 576, 733; vol. xxv, pp. 17, 183, 273. In most of them the houses had to be built and the families settled in the town within three years, and three acres of ground had to be cleared by each family in four years.

[2] *New Hampshire State Papers*, vol. xxiv, pp. 423, 733.

[3] *Ibid.*, vol. xxv, p. 185.

bestowed on the grantees as far as it was in the power of the government to grant them.[1] Furthermore, in the charter of Londonderry there was an additional clause to the effect that nothing in the charter should be construed to defeat, prejudice or make null and void any claim or title which either Massachusetts or any private individual might have to any part of the lands so granted by virtue of their falling within the confines of that government.[2] In all but three of the charters, namely, those of Barrington, Epsom and Kingswood, it was provided that the lands within the township should be divided among the grantees into equal shares. In that of Barrington, which was granted to the four proprietors of the iron works on Lamprey river to encourage them in their undertaking, it was stipulated that the lands should be divided among the grantees in proportion to the amount of taxes which each paid in Portsmouth the year before,[3] while in that of Epsom, which was given to the freeholders of New Castle and Greenland, it was provided that the lands should be divided among them in proportion to the rates paid by each in 1723.[4] In the charter of Kingswood, on the other hand, nothing at all was said respecting the manner in which the lands should be divided among the grantees.[5] In all the charters, clauses were inserted specially reserving for his Majesty's use all mast trees fit for the royal navy, and in all provision was made for the payment of an annual quit-rent or acknowledgment to the government. This, however, was but nominal. In the charters of Nottingham and Bow,[6] it was an

[1] The phrase was "as far as in us lies."

[2] *New Hampshire State Papers*, vol. xxv, p. 274. The charter was granted in 1722.

[3] *Ibid.*, vol. xxiv, p. 423.

[4] *Ibid.*, vol. xxiv, p. 733.

[5] *Ibid.*, vol. xxv, p. 183.

[6] *Ibid.*, vol. xxiv, p. 489; vol. xxv, p. 402.

ear of Indian corn; in those of Barrington, Chester, Barnstead, Epsom and Chichester, a pound of hemp;[1] in that of Canterbury, a pint of Indian corn;[2] in that of Gilmanton, a pound of flax;[3] in that of Rochester, a pint of turpentine; in that of Londonderry, a peck of potatoes;[4] and in that of Kingswood, ten pounds of hemp.[5]

Every charter stated that the tract of land therein designated was a town corporate, and every one provided that town meetings should be held annually for the election of constables, selectmen and other town officers. In all but two, those of Rochester and Kingswood, the day upon which the election was to be held was also specified. In the town of Bow it was to be held on the first Thursday in April,[6] and in that of Epsom on the first Wednesday in May,[7] while in all the other towns the election was set for a day in March. In the charter of Epsom it was also stipulated that the annual meeting might be held in any town of the province until the settlement of the town itself was perfected. In quite a number of the charters three persons were named to call the first meeting and act as the selectmen of the town until others were regularly chosen. In all the charters but one — that of Londonderry — a certain amount of land was set aside for a parsonage, for the benefit of a school, and for the support of the first ordained minister settled in the town. In most of them, the land reserved for each of these purposes equaled a proprietor's share; in the rest, it was a designated number of acres. In the charter of Kingswood 300 acres more were reserved for the second ordained minister that was settled in the

[1] *New Hampshire State Papers*, vol. xxiv, pp. 419, 423, 567, 576, 733.
[2] *Ibid.*, vol. xxiv, p. 524.
[3] *Ibid.*, vol. xxv, p. 17.
[4] *Ibid.*, vol, xxv, p. 273.
[5] *Ibid.*, vol. xxv, p. 183.
[6] *Ibid.*, vol. xxiv, p. 489.
[7] *Ibid.*, vol. xxiv, p. 733.

town, and it was also provided that an orthodox minister should be settled in that town within seven years.[1] In more than half of the townships both the governor and the lieutenant-governor of the province received a house-lot and 500 acres of land, while the members of the council each received a proprietor's share. In the grant of Londonderry five of the grantees received between them, in addition to what they received as their regular shares, 850 acres of land for the good services they had rendered in promoting the settlement of the place, and two of these five were granted, in addition to this, the use of a mill stream within the town.[2] Only in two of the charters—those of Londonderry and Kingswood—was any mention made of any fairs. In both those towns two fairs might be held every year upon the days specified, and in the former a market might also be held every Wednesday.[3]

As the towns, most of which were very extensive, became more and more populous and the centers of population within the same sometimes shifted, the distance which many people had to go to attend divine worship became greater. Additional meeting-houses, therefore, became necessary. Many inconveniences, too, often arose relative to the transaction of town affairs, and occasionally there were factional quarrels between those living in different sections of the town. These and other causes gave rise to the division of the towns into parishes, some of which, through the operation of similar causes, were afterwards subdivided. Sometimes the district set off from a town was, at the time of the separation, incorporated as a new town, but more often full town privileges were not conferred upon it for many years. These divisions might be made either by the

[1] *New Hampshire State Papers*, vol. xxv, p. 184.

[2] *Ibid.*, vol. xxv, p. 276.

[3] *Ibid.*, vol. xxv, pp. 185, 273, 276.

legislature or by the governor, and corporate powers might be conferred upon the inhabitants either by an act of the legislature or by a charter from the governor.

During the provincial period there were set off from Portsmouth, New Castle and Greenland; from Hampton, Hampton Falls and North Hampton;[1] from Dover, Newington, Somersworth, Durham and Madbury;[2] from Exeter, Newmarket, Epping and Brentwood; from Kingston, East Kingston, Sandown and Hawke; from Londonderry, Windham and Derryfield; from Chester, Candia and Raymond; from Canterbury, Loudon; and from Nottingham, Deerfield and Northwood.[3] Some of these districts were later subdivided. Thus, from parts of Hampton Falls, Kensington and Seabrook were formed; from part of Brentwood, Freemont; from part of Durham, Lee; and from parts of Portsmouth, New Castle and Hampton, the parish of Rye. As the townships which were granted after the middle of the century were, in most cases, much smaller than those granted prior to that time, the need of subdividing them was not so urgent. Consequently they have, as a rule, retained approximately their original charter bounds.

After the Masonian proprietors began to grant out the lands embraced within their claim,[4] the governor made practically no attempt to interfere with them, and did not issue a single grant for land east of what was considered the western boundary of their claim. As they were unable, however, to confer political or municipal privileges upon the grantees, it became necessary, when the towns they

[1] *New Hampshire State Papers*, vol. xxiv, p. 134.

[2] *Ibid.*, vol. xxiv, p. 73.

[3] *Ibid.*, vol. xxiv, pp. 243, 523, 566, 576; vol. xxv, pp. 179, 272, 402, 543.

[4] See *post*, pp. 303, 310.

granted desired these privileges, to petition the government for the same. Likewise, in the grants that had been made by Massachusetts, these privileges had not been conferred. In the New Hampshire grants, on the other hand, provision had been made for the political organization of the town, and such provision continued to be made in the township charters until John Wentworth assumed the reins of government in 1767. Where it was not made it was necessary to apply to the government for such privileges. In a few instances, however, it appears that the inhabitants assumed the powers and privileges of municipal self-government without any legal incorporation.

When the southern boundary of the province was run in 1741, the line cut off from the six Massachusetts towns on the lower Merrimac all the lands which the latter claimed north of a point three miles from the river. The inhabitants north of the line, thus excluded from the Massachusetts towns, then found themselves without the bounds of any township. As a result, no legal meetings could be held, no officers elected, and no taxes levied or collected. To obviate these difficulties the New Hampshire legislature created out of the lands thus cut off six new districts, all of which within the next decade petitioned for and received from the governor full corporate privileges, being incorporated under the names of South Hampton, Newtown, Plastow, Hampstead, Salem and Pelham.[1] Later Plastow was subdivided, a new parish being created out of it and incorporated under the name of Atkinson.

[1] *New Hampshire State Papers*, vol. xxv, pp. 73, 383, 419, 449, 493, 521. Plastow and Newtown were later known as Plaistow and Newton. The dates of the charters of incorporation are: South Hampton, May 25, 1742; Pelham, July 5, 1746; Hampstead, January 19, 1749; Plastow, February 28, 1749; Newtown, December 6, 1749; Salem, May 11, 1750, Atkinson, September 3, 1767.

Out of that part of the old Dunstable grant which fell within New Hampshire when the boundary line was run no less than six townships were formed.[1] In 1746 the governor granted five charters of incorporation to the inhabitants of as many different sections of the territory as had presented him with petitions praying to be enfranchised, and granted the powers and privileges of other towns, and, in 1749, upon a similar petition, that part of the grant known as Naticook or Brenton's farm also received a charter of incorporation. The names under which these tracts were incorporated were Dunstable, Holles, Monson, Merrimac, Litchfield and Nottingham West.[2] In 1770 Monson lost its identity, being divided between the towns of Amherst and Holles, the reason assigned by the inhabitants in their petition for a division being that the land was so barren and broken as scarcely to admit of any improvement, thus rendering it impracticable for their civil and religious polity.[3]

From 1741 until the time of the Revolution about fifty charters of incorporation were issued by the governor. All were, in the main, similar in form. In each, it was stated that the inhabitants of the tract therein designated and described were thereby formed and incorporated into a body politic and a corporation, possessing all the powers and privileges, immunities and franchises, which any of the other towns within the province held and enjoyed by law. In each, also, two reservations were made, one reserving to the crown all white pines growing within the town which

[1] The grant of Dunstable was made by Massachusetts in 1673.

[2] *New Hampshire State Papers*, vol. xxv, pp. 135, 137, 255, 334, 349, 353. Later the names Dunstable, Holles and Nottingham West were changed to Nashua, Hollis and Hudson.

[3] *Ibid.*, vol. xxv, p. 351.

were, or might be, fit for the royal navy, and the other, reserving to the government the power to divide the town whenever it should be thought necessary or convenient for the inhabitants. In each, too, some person was named to call the first meeting of the inhabitants, that such officers as the law provided for might be legally chosen. Moreover, the time within which this meeting was to be called was regularly specified. Usually, too, the day and month when the annual meeting was to be held were also mentioned.[1] In almost all the charters it was stipulated that this meeting should be held in March. As most of these charters were granted to the inhabitants of towns lying within the limits of Mason's grant, they usually contained a clause to the effect that nothing in the charter should be construed to affect "the private property of the soil."[2]

In 1751 the Governor began to grant out the land within the territory east of the Connecticut river and west of what was regarded as the western boundary of Mason's grant. Up to the time when war broke out in 1754 almost all the townships which he granted in that section were situated in that part of the territory from which Massachusetts had made grants prior to the determination of the southern boundary of New Hampshire, and most of them were substantially re-grants of the Massachusetts townships under different terms and conditions. Some of them were granted exclusively to the original grantees and to such others as had acquired rights in the soil from the latter, while some of the grantees named by the governor in other township

[1] *New Hampshire State Papers*, vol. xxv, pp. 30, 306, 307, 358, 365, 506, *passim*. In the charters issued by Benning Wentworth the meeting was generally to be held within 30 days from the date of the charter; in those issued by John Wentworth, more time was usually allowed. The longest period was 190 days; the shortest, 20 days.

[2] *Ibid.*, vol. xxiv, p. 701; vol. xxv, pp. 4, 114, 332, 333, 497, *passim*.

grants were people who had been named in or were settlers under the original charters.

As Canada was in the hands of the English when the war closed, and remained thereafter in their possession, all danger from the enemy was removed. The result was that townships were granted in greater numbers and further north than ever before. In most of the charters which were issued by Benning Wentworth in this section during the quarter of a century when he was governor, the terms, conditions and reservations mentioned in each were, in the main, the same. In most cases, all the land within the township, the area of which was supposed to be equivalent to six miles square, after a tract of 500 acres was set aside for the governor and a liberal allowance made for highways, ponds, rocks and mountains, was to be divided into a designated number of equal shares, all but three or four of which were to be apportioned among the grantees whose names were appended to the charter.[1] In some of the charters the members of the council were included among the grantees, each receiving one share. Of the shares reserved, one was for the Incorporated Society for the Propagation of the Gospel in Foreign Parts, one for the first minister of the gospel settled in the town, and one for a glebe for the ministry of the Church of England. In the charters issued from 1760 on, a share was also reserved for the benefit of a school. In a few, issued in 1766 and 1767, only two shares were reserved, one for the first settled minister and one for the benefit of a school. Each grantee was required to plant or cultivate five acres of land in five years for every fifty he received, and continue thereafter to im-

[1] Usually the governor's land was in one corner of the town. Generally the allowance for ponds, etc., was 1040 acres. The number of shares varied; generally there were 68 or 70 shares.

prove and settle the same by additional cultivation, upon pain of forfeiting his share. In all cases the same quit-rent was imposed. For the first ten years this was to be an ear of Indian corn; after that one shilling a year for every hundred acres. Furthermore, pine trees fit for the royal navy were always reserved, and any grantee who attempted to cut the same without the royal license was to forfeit his share and pay such penalty as was mentioned in the act of Parliament.

In every charter it was stated that the tract granted was thereby incorporated as a township, the inhabitants of which were entitled to all the privileges and immunities that other towns within the province exercised and enjoyed. In some of the charters granted between 1760 and 1767 it was stipulated that the town should remain incorporated during the governor's pleasure; in others, until his Majesty's pleasure was signified to the contrary; and in still others, until a certain year (a few years distant). Then upon the petition of the inhabitants they were reincorporated, to remain so either until his Majesty's pleasure was further known or during the governor's pleasure.[1] In all the charters it was provided that the first meeting should be called within a certain period by the person named in the charter, and that the annual meeting should be held at the time therein specified. In almost all cases it was to be held in March, and in a great many of the towns on the second Tuesday of the month. As soon as there were fifty families settled upon the land the town might hold two fairs a year, one in the spring and the other in the fall, and might also keep a market one or more days in each week. If the grantees failed to fulfil the conditions of the grant the whole was to revert to the king, and might be re-granted.

[1] *New Hampshire State Papers*, vol. xxiv, pp. 480, 600, 636, 709; vol. xxv, pp. 32, 34, 300, 358, 365, 367, 370, 477, 490, 502, 636, 638.

In the charters of Charlestown, Hinsdale, Keene, Swanzey and Winchester, all of which towns had been previously granted by Massachusetts and partly improved under the latter's grant, it was stated that the land within the respective townships should be divided into such shares and proportions as the grantees then held or claimed either by purchase, contract, vote or agreement made among themselves. In all but the charter of Keene the right was reserved to add to or divide these towns, as far as the incorporation of the same was concerned, whenever it appeared necessary or convenient, while in those of Hinsdale, Swanzey and Winchester a clause was inserted to the effect that the unimproved lands should be subjected for four years to an annual tax for the erection of a meeting-house and the settlement of a minister in the town. The tax was to be ½ d. an acre in Hinsdale and 1 d. in the other two. Although it was provided that a market might be held on one or more days in the week as soon as there were fifty families in the town, nothing was said respecting any fairs. In all other respects these five charters were similar to those which were usually granted.

The township charters which were granted by Governor John Wentworth, Benning Wentworth's successor, were not as uniform in their terms and conditions. Although the townships were generally granted, as before, to a considerable number of grantees, several were bestowed upon a few men. Three — Colebrook, Cockburne and Stewartstown [1] — were conferred upon the same four men — Sir George Colebrooke, Sir James Cockburne, John Stewart and John Nelson. Durand [2] was granted to John Durand

[1] Later the last two names were changed to Columbia and Stewartstown. Colebrook, Cockburne and Stewart were residents of London, while Nelson lived in Grenada in the West Indies.

[2] Later the name was changed to Randolph.

and his son, both of London, saving, however, three 500-acre plots in the town for three others mentioned in the charter; Shelburne to Mark Hunking Wentworth and six other gentlemen of the province; Landaff to the trustees of Dartmouth College for the benefit of the latter; and both Maynesborough and Paulsbourg[1] to Sir William Mayne and eighteen others.[2] The clause incorporating the town was not included in the charters granted by John Wentworth. Consequently nothing was said about holding town meetings. The clauses, too, respecting the holding of a weekly market and annual fairs were also lacking. Although, in some of the charters, a share was reserved for the benefit of a school, another for the first settled minister, a third for the Society for the Propagation of the Gospel, and a fourth for a glebe for the Church of England, in others shares were reserved for only three of these purposes, in still others for only one or two, and in quite a number no shares were reserved at all. In all, there was the same reservation respecting pine trees as in the charters granted by the previous governor. Within a certain period, varying in the different charters from one to ten years, one ear of Indian corn had to be paid as a quit-rent, after which the latter was to be one shilling a year for every 100 acres. As a rule, the town lots were of the usual size, one acre, but where there were but a few grantees they were four times as large. Generally, within a specified time, usually one or two years, the grantees were required to build a road through their township suitable for carriages of all kinds. In almost all the charters it was provided that a certain number of families—in the major-

[1] Later known as Berlin and Milan.

[2] *New Hampshire State Papers*, vol. xxiv, pp. 477, 593, 603; vol. xxv, 203, 340, 513, 537.

ity of cases twelve—should be settled in the town within a designated period, and that additional settlements should be made after that, so that by a certain year there should be no less than a specified number of families, generally sixty, upon the grant. In several charters there was a further stipulation to the effect that, if the land was adapted to the raising of hemp or flax, ten acres in every hundred should be planted with the same inside of ten years.[1] In several there was a clause expressly stating that the grant should not interfere with any previously made and in force.[2] In a few charters the grantees were not required to settle any particular number of families upon the grant, but they were to have 2,350 acres enclosed within five years and cultivated with grass, hemp, corn, flax or English grain, according as the soil might prove suitable for all or either of them.[3]

A great number of the townships reverted to the crown through the failure of the grantees to fulfil the conditions of the grant, and were re-granted by the governor, sometimes to the same grantees but more often to others. The failure to comply with the conditions of the charter was due to various causes, such as bad crops, the lack of communication with other settlements and especially with the centers of trade, the failure of some of the grantees to perform their share of the work, and the remote location of the town and its inaccessibility. In some cases, where the townships were granted prior to 1760 it was due to the hostilities with the Indians, which compelled the settlers to withdraw from the town entirely.

Sometimes the inhabitants petitioned the governor for an extension of time for the fulfilment of the terms of the

[1] *New Hampshire State Papers*, vol. xxv, pp. 174, 344, 528, 628.

[2] *Ibid.*, vol. xxiv, pp. 499, 735; vol. xxv, pp. 174, 344, 528, 628.

[3] *Ibid.*, vol. xxiv, p. 703; vol. xxv, p. 553.

charter. In some cases, where the hostilities with the Indians had rendered compliance with the terms of the charter impossible, the grantees were given an additional year, which term was to be renewed annually until plenary instructions were received from the king relating to the incident which prevented a compliance with the charter.[1] In other cases the charters were renewed for a definite period, varying, according to circumstances, from three to five years.[2]

In addition to the township grants, a considerable number of other grants were made by the last two governors to various persons who had applied for land by virtue of the royal proclamation of October 7th, 1763, which commanded and empowered the governor to grant lands without fee or reward to such ex-officers and soldiers of the last inter-colonial war as should make application for the same. These grants varied greatly in size, the majority being between two and three thousand acres. Some were much smaller, others much larger.[3] Usually the grant was made out to a single individual, but in some instances two or more were named as joint owners of the tract granted. In general, they provided that a certain number of families[4] should be settled upon the land within a specified year, and that after a certain time one shilling should be paid as a quit-rent for every 100 acres. All pine trees were reserved, and, in most of the charters granted by John Wentworth, it was also stipulated that a road should be

[1] *New Hampshire State Papers*, vol. xxiv, p. 575; vol. xxv, pp. 598, 627.

[2] *Ibid.*, vol. xxiv, pp. 518, 677; vol. xxv, pp. 193, 283, 292, 320, 372, 409, 547, 603.

[3] *Ibid.*, vol. xxiv, pp. 431, 475; vol. xxv, p. 533. *E.g.*, one to Robert Furniss contained 580 acres, one to John Winslow 5060 acres and one to Geo. Meserve 5000 acres.

[4] Usually less than 10.

built through the tract by a certain date. Later, these tracts were annexed to the adjacent towns, or combined either with several similar grants or with parts of the adjoining townships to form new towns.

The system of granting townships to a large number of grantees, the method of dividing and allotting the lands within the same, and the form of government which prevailed in each were borrowed largely from Massachusetts.

The grantees of the numerous townships were generally known as proprietors, or in a collective sense as the proprietary. In each case they became a land company, and as they exercised some of the powers of corporations, they were in each instance a quasi-corporation. Usually they chose a moderator and a clerk and maintained such an organization as was necessary to accomplish the end they had in view. Meetings were held from time to time, at which resolutions were passed and regulations made respecting the division and allotment of the lands among themselves. Sums of money were also voted to facilitate the work of the settlement. The township was surveyed and divided up into large or farm lots and small or home lots, while some land was reserved for mill privileges and certain public uses. Generally, the lots were drawn for by lot. As a rule, the home lots were as near the center of the grant as the nature of the country would permit, but sometimes the advantages which a waterfall, a river, a natural meadow or a plain offered induced the grantees to have them laid out near such a fall, river, meadow or plain. As the people built their houses upon the home lots, a village sprang into being. Here were located the training field, the meeting-house, the school and the cemetery. The village became the place for the transaction of business and for social intercourse. Provision was made by the proprietors for such main roads through the grant and for such

cross roads as were thought necessary. Although some, in becoming grantees, were actuated by a spirit of enterprise, and others by a desire to obtain land either for themselves or for the younger members of the family, a considerable number were influenced solely by the spirit of speculation and never had any intention of taking any part in the settlement of the township. Often they sold their shares or parts of them, but when they did not, they proved a great drawback to the town and made the work of settlement all the more burdensome for the rest, for they neither lived upon the land nor did anything to improve it. The lands within a township frequently changed hands, being bought and sold just as any other land might be. When all the lands of the town were divided and allotted among the grantees, the proprietary ceased to exist, as the object for which the organization had been created was effected and there was no other business for it to transact in a corporate capacity. As far as the crown lands were concerned, the towns were the agencies through which the territorial affairs of the province were, to a large extent, transacted.

Not infrequently most, or all, of the grantees of a township came from a particular town or locality. As the new towns were more or less isolated from one another, it often happened that the settlers preserved to a high degree the habits, manners and customs which prevailed in their old homes. Hence, each settlement was apt to have its own individuality. Although the grantees sometimes expressed a desire to have the township given a certain name, it remained for the governor to determine what the name of the place should be. Sometimes he acceded to their wishes, but at other times he named them after places in the Old World or after some of his friends. Quite a number of the new towns, therefore, bore the names of noblemen and gentlemen of distinction in England, while some were called

after persons of some prominence in the province. Others were named after towns in other parts of New England; several after the principal grantee, and a few retained the local Indian names. As a rule, the settlers were either young people or persons in the prime of life who were inured to hard work and well able to endure the many hardships which were encountered in the wilderness. Often, when the township was far from the centers of trade, the settlers, during the first few years, worked hard in clearing and improving the land during the spring, summer and early fall, when they returned home to spend the winter, which was generally long and cold. They lived very simply, and were, on the whole, thrifty and frugal in their habits, and kind, energetic and industrious. Their houses were at first small and very plain, generally made out of logs or coarse boards, while the furniture was usually home-made and the household utensils were of the simplest kind. Away from the thickly settled parts of the province traveling was exceedingly bad, particularly so in rainy weather and when the frost was coming out of the ground. The roads were very rough and uneven and usually very narrow, being hardly wide enough for the passage of the heavy wagons that were then used. On account both of the rough character of the work which had to be done and of the cost of maintaining horses in the sparsely settled districts, oxen were generally used instead of horses.

At the town meetings, the qualified inhabitants met and chose constables, selectmen and such other officers as the laws of the province provided for. At such meetings, too, they deliberated and acted upon a variety of matters of more or less importance and interest. As the towns were empowered to preserve peace and good order within their borders, regulate matters of purely local concern, and in general manage all the prudential affairs of the place in a

manner not repugnant to the laws of the province, various regulations had to be made and by-laws and orders passed from time to time concerning them.

As roads and bridges had to be constructed and kept in repair, a meeting-house and a school maintained, and other internal improvements made, the inhabitants voted to raise such sums as were necessary for these purposes. The province tax was also raised by the town officers, the proportion which each had to pay being determined by the legislature. As the towns, too, were church-supporting establishments, all the inhabitants were obliged to contribute towards the support of the minister and towards the maintenance of the meeting-house. In some cases ministers were maintained without the aid of the town. For the violation of its orders and by-laws the town could impose any penalty not exceeding twenty shillings. The towns were all subject to the legislature and to the laws of the province, and, as far as their acts and orders affected the private rights of the individual, they were subject to review by the courts. From time to time additional powers and duties were conferred upon the towns. All towns were required to keep a common school, and, when they contained a certain number of families, they were obliged to maintain also a grammar school. In time of war the legislature often ordered the towns to provide provisions, ammunition, arms and snowshoes for the soldiers, keep scouts on duty, maintain garrison houses, and put the place in a posture of defence. As far as the internal affairs of the place were concerned, each town was practically a little republic. It was accustomed to self-government and quite capable of managing its own affairs without outside aid. Hence, it happened that when the provincial government was overthrown each was able to enforce and maintain order within its borders. Not only was anarchy thereby prevented, but the people were in a

position to form a new government in a more systematic and orderly way than could have been done had the provincial government been a highly centralized one.

While the appeals from the decision which the boundary-line commissioners rendered in 1737 were pending in England, some gentlemen in Massachusetts, realizing that the line north of the Merrimac, when finally established, would transfer to New Hampshire considerable land which was then embraced within the limits of the various towns situated on the lower half of the river, conceived the idea of having Mason's heir quit-claim the same to Massachusetts.

Now, at the time that John and Robert Mason sold their title to Samuel Allen in 1691, the validity of the transaction appears to have been unquestioned. As required under the law of the realm in such cases, the entail had been docked some time before the sale was made. It will be remembered that the proceedings which were taken to dock the entail were carried on in England in the court of King's Bench, the lands in question being considered by a fiction of law as lying within the English parish of Greenwich. Many years later some doubt arose as to the legality of these proceedings. It was contended that the fine and recovery sued out in the county of Kent in England could not bar the entail of lands in America, because there were at that very time courts of justice within the province where the lands lay before which such proceedings, being local in character, could and should have been brought. Furthermore, it was claimed that it was impossible for the sheriff of an English county to put the party recovering into possession of the premises as required under the law, for the reason that the lands were outside of his bailiwick. If such was the case, it followed that Allen's interest in the lands of the province was only a life interest, ceasing as soon as the Masons died, when it reverted to the latter's heirs. Of the two

Masons, from whom Allen purchased his title, John died without issue, while Robert had a son, who, in 1696, became sole heir to the property.[1] In 1718 the latter died, leaving three sons, the eldest of whom was named John. This was the man with whom Massachusetts treated in 1738.[2]

In June of that year he presented a memorial to the General Court, stating that, since it was his desire to be present at the determination of the boundary controversy between the two provinces in order to prevent his property from being affected thereby, he thought it proper to acquaint them of his intention so that, "if anything just and equitable may be thought of proper to be done by and between the province and your memorialist, it may be brought about."[3] As the court was of the opinion that his presence in London might prove serviceable to the province, orders were given to pay his expenses as long as his services there were required.[4] On the 1st of July, Mason, in consideration of the sum of £500, quit-claimed to the inhabitants of the river towns of Salisbury, Amesbury, Haverhill, Methuen and Dracut all the lands within those towns which were more than three miles north of the Merrimac.[5] This quit-claim covered 23,675 acres and appears to have been made for the purpose of having the boundary line run along the northern limits of those towns.

Soon after Mason's arrival in England the agents of the province mentioned the scheme to the king's solicitor, but the latter advised them not to press it, lest the Lords of

[1] Robert died in 1696.

[2] *Prince Society Publications*, vol. xii, p. 42; *New Hampshire State Papers*, vol. xxix, p. 173.

[3] *Ibid.*, vol. xxix, p. 177.

[4] *Ibid.*, vol. xxix, pp. 192, 193, 197.

[5] *Ibid.*, vol. xxix, pp. 189, 191.

Trade "should think it an artifice intended to perplex the main cause."[1] Thereupon Mason was dismissed from any further attendance. Although the affair had been carried on with as much secrecy as the nature of the thing permitted, Thomlinson, the New Hampshire agent, heard of it, and finding that Massachusetts had no further use for Mason, persuaded the latter to enter into an agreement to release his interest in the province in consideration of the payment of £1,000 New England currency within twelve months after New Hampshire was made a distinct and separate province, and upon condition also that he should receive in all future grants a lot or share equal in proportion to that of any party or parties to whom such grants were made.[2]

For several years nothing further was heard of the matter. Although Benning Wentworth took the oath of office as the first separate governor of New Hampshire in December, 1741, the legislature was not officially notified of the agreement until 1744, when the governor laid the document before the house of representatives for their perusal and consideration.[3] As the members were not inclined to take any action upon it, the governor found it necessary from time to time to press them to come to some determination respecting it. The council, too, recommended that the agreement be approved and accepted, while Mason himself on several occasions urged them to give him a decisive

[1] Belknap, *History of New Hampshire*, vol. ii, p. 161.

[2] *New Hampshire State Papers*, vol. xxix, p. 193. This was called the tripartite agreement. Mason was the party of the first part; John Rindge, Theodore Atkinson, Andrew Wiggin, George Jeffreys and Benning Wentworth, all of New Hampshire, were of the second part, and John Thomlinson, the agent for New Hampshire, was the party of third part. The deed was dated April 6, 1739.

[3] *Ibid.*, vol. xxix, p. 197.

answer, at last intimating that, if the agreement was not approved, he would sell his claim to others.[1] Finally, on the 29th of July, 1746, the house resolved that the right which Mason claimed should be purchased for the benefit of the people, that the inhabitants should be quieted in their settlements agreeably to the grants of the government, and that the waste lands should be granted out by the general assembly to such inhabitants as they might think proper.[2] Accordingly, the following day they voted that a joint committee of the two houses should be appointed to treat with Mason and draw up the necessary instruments of conveyance. The council, however, entered an objection against the general assembly granting away the waste lands, claiming that, as the governor and council alone had the power to dispose of any lands, it would be inconsistent with the constitution and contrary to the royal commissions and instructions to lodge that power anywhere else. Nevertheless, if it was the intention of the house to purchase Mason's right and then address the king for leave to dispose of the lands to the people in the manner suggested, it would acquiesce therein. Although the councillors expressed themselves as willing to join in appointing a committee to treat with Mason, they apprehended that the resolve of the house was not consonant to the agreement, particularly that part of it referring to the disposal of the waste.[3]

In order that he might be in a position to sell the lands he claimed within the province, Mason sued out a common recovery in the New Hampshire courts for the purpose of breaking the entail. Having accomplished this, he sold his interest in the lands of the province to twelve persons for

[1] *New Hampshire State Papers*, vol. xxix, pp. 197–199.
[2] *Ibid.*, vol. xxix, p. 212; *Provincial Papers*, vol. v, p. 445.
[3] *New Hampshire State Papers*, vol. xxix, p. 218.

£1,500, £500 more than was designated in the tri-partite agreement.[1] This happened on July the 30th, the day following that upon which the house had resolved to purchase Mason's right. Although it appears that Mason felt slighted at the way the house treated him and had made up his mind to have nothing further to do with that body, still the reason that caused him to make the sale just at this juncture was that he was under orders to sail for Louisburg within a few days and desired to have the matter settled before his departure.[2] The day after the purchase the new proprietors quit-claimed to the inhabitants all the land contained within the original towns, as well as that embraced within the limits of all the other towns, that had ever been granted by the government of New Hampshire, the towns of Gilmanton and Kingswood alone excepted. And the reason that they were not included was that the proprietors did not believe any improvements had been made within their limits.[3]

The following day, August the 1st, a committee was appointed by the two houses to consider what ought to be done in the matter. After a short consultation, the committee reported that, for the quieting of the good people of the province and for the prevention of future difficulties and disputes over land titles, it would be best to purchase Mason's claim for the use and benefit of the inhabitants, provided the purchasers would sell it for the same sum that they paid for it, plus such charges as they had incurred.[4] The report being accepted, the committee was commanded to treat with the claimers, and if the sale could be effected

[1] *New Hampshire State Papers*, vol. xxix, pp. 202, 205, 207, 213.

[2] *Ibid.*, vol. xxix, pp. 255, 258.

[3] *Ibid.*, vol. xxix. p. 216. July 31st, p. 257.

[4] *Ibid.*, vol. xxix, p. 219; *Provincial Papers*, vol. v, pp. 447, 448.

on the terms mentioned, it was to conclude the bargain and have the necessary documents drawn up in time to have them laid before the assembly at its next meeting. After holding a conference on the subject with the purchasers, the committee reported that, when the question was put to the claimers whether they would sell upon the terms proposed by the assembly, "they did not all agree, but soon after broke up and left the committee." [1]

When this became known the purchasers were severely blamed for taking a bargain out of the government's hands. In their defense they drew up a memorial,[2] addressed to the committee, briefly setting forth the facts in the case and giving their reasons for purchasing the claim. They prefaced their remarks by saying that, when the committee and they parted, they fully expected from what had been said that the committee would have pursued that part of their instructions which related to the drawing up of the necessary instruments of conveyance. To disprove the charge that they took a bargain out of the government's hands, they called attention to the fact that the matter had been before the assembly since October, 1744. Moreover, they reminded them of what had been done since then to have the agreement ratified, and asserted that they had been unable to force the assembly to purchase it, although those of them that were of the assembly had always done everything in their power to forward it. Furthermore, they declared that they had finally purchased the claim after Mason had made up his mind not to sell it to the province, in order to prevent the mischief and confusion which would have arisen had the claim been purchased by others who

[1] *New Hampshire State Papers*, vol. xxix, p. 220. The conference was held August 4th and the report presented August 12th.

[2] *Ibid.*, vol. xxix, p. 221. September 4th.

would have set up a title in opposition to that under which the inhabitants then held. And, to show that they had acted in the interest of the people, they referred to the quit-claim deed which had been executed in favor of those holding lands within the various townships. This deed, they said, they had executed "freely and without any consideration but to quiet the good people, for had our view been otherwise, we might have made great sums, even of private persons, to have confirmed their particular rights, in many of these new towns, whose possessions cannot as yet create them a right. This was one reason of our purchasing, and let any impartial person judge whether we have injured the inhabitants or befriended them." "We assure you," they continued, "that many of us would have given as much money for Mason's private quit-claim to our own rights in the new towns. Besides, everybody knows how Mason's right has always hung over us, and on every turn we are threatened with a proprietor. This has ever been the case since the government was settled, and very lately these threats have come nearer home, for within less than twelve months Mason's deed to a committee of the Massachusetts in behalf of that government for a tract of land on the boundary line, whose purchase consideration was £500, has lately been entered on our province records and brought into court, and, as we are informed, a title under it set up in opposition to the grants made here by the governor and council. Seeing these things, we wisely prevented the spreading evil by taking Mr. Mason up, who, when we agreed with him had better offers from another quarter. And now, gentlemen, we assure you that we are ready to execute a deed for our remaining interest in the premises in the same manner as we received it and for the same sum, with our cost attending the same, provided this is done within a month and the

deed is made to convey the land to the government to be granted out to such inhabitants as the governor and council shall grant charters to."

After this memorial was received the house again voted to appoint a committee to purchase the claim, but a report that a French fleet was off the coast prevented any attention being paid to any other business than that of preparing for the defence of the province.[1] Although the vote was revived after the danger was past, and an effort was later made by the assembly to have the proprietors of the claim convey their rights to some feoffees in trust for the inhabitants, no agreement could be reached.[2] The chief difficulty in the way of a settlement was over the question respecting the disposal of the lands. The proprietors, on the one hand, refused to release their interest unless the power to dispose of the lands was vested in the governor and council, while the house, on the other hand, determined not to make the purchase unless that power was vested in the legislature. Each, in fact, feared that if it complied with the other's demand on this point the advantages which were expected would not be realized. The consequence was that the title remained in the hands of the proprietors.

Soon after the latter began to make grants of land within the limits of their claim, the heirs of Allen warned the people not to accept such grants, as the proprietors' title to the property was invalid. They were willing, however, to compound their claim with the purchasers of Mason's title, and in fact made several offers to the latter with the view of having the question amicably settled.[3] Their con-

[1] *New Hampshire State Papers*, vol. xxix, pp. 224, 260.

[2] *Ibid.*, vol. xxix, pp. 226, 227, 230.

[3] *Ibid.*, vol. xxix, p. 281.

tention, of course, was that the docking of the entail in England was perfectly proper and legal, and, to show that Allen's purchase was regarded as valid, they cited the reservation in the Massachusetts charter concerning Allen's right, which reservation, they contended, would never have been introduced had not the crown lawyers, who were consulted when the instrument was drawn up, been convinced of the legality of the proceedings which had been taken in England to bar the entail. Quite a number regarded the Allen claim as valid, and in England this conviction was so strong that the latter's heirs were receiving offers for the purchase of their title. Governor Wentworth himself entertained some doubts as to the legality of Mason's title, and, from what he told the Board of Trade, it appears that, in pressing the matter before the assembly, he urged the latter to purchase both claims so that a perfect and undisputed title to the lands of the province might be secured.[1] Thomlinson, the able agent for the province in England, was of the same opinion, and strongly urged the purchase of all titles affecting the lands of the province. Although the proprietors of Mason's title declared that they had obtained possession of every inch of the property and had no doubt but that they could hold it against all claimers, Thomlinson bluntly told them that all they had done or were about to do would avail them nothing unless they first established their just and legal rights to the property, which depended solely upon the question whether or not the fine and recovery sued out in Westminster Hall was legal or not. If it was legal, their claim, of course, was invalid. He also called attention to the fact that Allen's right had never been regularly impeached or called into question, but stood reserved not only in the Massachusetts charter but

[1] *New Hampshire State Papers*, vol. xviii, p. 396.

also in the proceedings on the settlement of the boundary and in all other proceedings.[1] If the recovery sued out in England did not bar the entail in New Hampshire, how did it happen, he asked, that Allen's, and not Mason's, right was mentioned in the Massachusetts charter, "for certainly the ablest lawyers in the kingdom were consulted and employed in settling that charter, and undoubtedly Allen must have been called upon to make good and prove his right before such a reservation could be introduced." In order to avoid a long, troublesome and expensive litigation, he strongly advised them to buy up also Hobby's right and give him directions to purchase Allen's right, too, even though it would cost £2,000 or more, for that, he assured them, was the only way a perfect title could be obtained, and in the long run it would also be the cheapest and safest method, because, if there was ever any litigation over the present title, it might cost each party at least that sum to properly defend it, and then no one would be able to tell in advance which party would ultimately win. The proprietors in New Hampshire, however, convinced that their title could not be successfully assailed in court, and fearing no serious disturbance from those claiming under any other, discarded the agent's advice and went on with the work of granting out the lands within their claim.

With the view of securing and improving their interest in the waste lands within the limits of their grant, the Masonian proprietors, on May 12th, 1748, affixed their signatures to a notification stating that a meeting of the proprietors would be held on the 14th inst. to choose a clerk, select such committees as might be deemed necessary, and transact such other business as might be thought proper.[2]

[1] *New Hampshire State Papers*, vol. xxix, pp. 281–288.

[2] *Ibid.*, vol. xxix, p. 403.

Upon the appointed day they met, and, after choosing a moderator and a clerk, voted that any eight of them should have power to call a meeting at any time except when one was under adjournment.[1] Four days later a committee was appointed to get such papers and records as might be judged necessary to support and maintain their title, and agents were, at the same time, selected to prosecute any who trespassed upon their lands.[2] In the fall the question of granting out the lands of the proprietary was taken under consideration. Those desiring grants were heard and proposals were made respecting the terms upon which the lands should be granted and the method which ought to be pursued in making the grants.[3]

On account of the opposition of the legislature and the clamor of the people, the proprietors encouraged applications for lands and engaged to make grants upon easier terms than the governor, restrained as he was by the royal instructions, could possibly make them.[4] By December no less than thirty-one petitions had been preferred praying for township grants, while several applications had been also received for grants of smaller tracts.[5] On the 9th of November the proprietors began to dispose of their land. On that day they confirmed to the original proprietors of Souhegan East, otherwise known as Narragansett No. 5, the rights which the latter had received under the grant from Massachusetts, excepting and reserving for themselves only seventeen shares,[6] and on December 3d they

[1] *New Hampshire State Papers*, vol. xxix, p. 404.

[2] *Ibid.*, vol. xxix, p. 404. May 18th.

[3] *Ibid.*, vol. xxix, pp. 407, 408, 409.

[4] *Ibid.*, vol. xxix, p. 244. The instructions specified the terms upon which grants could be made by the governor, see vol. xviii, p. 376, 538.

[5] *Ibid.*, vol. xxix, pp. 234, 412.

[6] *Ibid.*, vol. xxix, p. 409. It is now Bedford.

passed their first grant of a new township, namely, Goffstown.[1]

When Mason's title was bought, in 1746, twelve persons had an interest in the purchase, which was divided into fifteen equal shares. Of these shares Theodore Atkinson had three, Mark Hunking Wentworth two and the others one each. As the shares could be sold or otherwise disposed of, they sometimes changed hands, and four of them were even subdivided. Soon Atkinson and Wentworth disposed of their extra shares, after which no person owned more than one each.[2] Whenever it was necessary to raise money for any purpose an assessment was levied on the several shares.

In administering their affairs the proprietors generally worked along the lines of least resistance and adopted a policy which was both judicious and conciliatory. They were men of character and of wealth, with strong social and political connections. Most of them were connected by blood or marriage to each other or to the other proprietors. They were, in general, persons of considerable influence and ability, successful in business, conservative in temperament, and considerate in their dealings with the people. Many of them took a prominent part in the affairs of the province. Some of them, too, belonged to the council at the time of the purchase, and within a few years the number of proprietors in the council increased to seven, two of them being brothers of the governor.[3] They were, therefore, in a position to make their influence felt in many ways and directions. When all these things are weighed and con-

[1] *New Hampshire State Papers*, vol. xxix, p. 413.

[2] *Ibid.*, vol. xxix; for a list of the owners of the various shares and the parts each possessed, see pages 213, 275, 276, 317, 345; also the introduction to vol. xxviii.

[3] *Ibid.*, vol. xxviii, introduction.

sidered, it is not surprising to find that they succeeded in successfully maintaining their title against all comers without any very serious disturbances for some forty years, during which period they disposed of most of their holdings.

Although some of the settlers, who had been engaged in improving the lands which they had received under the grants from Massachusetts, abandoned their claims and left the province when they realized that the titles derived from that colony were invalid, a great number remained. Many of those whose lands were situated within the limits of Mason's grant eventually came to terms with the Masonian proprietors. As a rule, the latter were inclined to be lenient with those who were actually settled upon the land. A few of the settlers, however, resisted all overtures, so that it was necessary to bring suit against them. Upon the trial of such cases the Masonian proprietors were always the victors. Consequently some people suffered serious losses. In many cases the proprietors quit-claimed to the Massachusetts grantees all their claims within the townships granted by that government upon exceptionally reasonable terms. Generally they reserved to themselves only a certain number of shares or a designated amount of land. In some instances, certain conditions of settlement had also to be fulfilled. The proprietors of the town of Gilmanton, which was one of the two towns that had been excepted from the general quit-claim of the Masonian proprietors in 1746, now received a quit-claim from the latter of all their lands upon two conditions, namely, that eighteen shares (to be laid out in one tract in the northerly part of the township) should be reserved to the Masonian proprietors and that the settlement of the town should be made in three years according to the terms of the royal charter.[1] As a

[1] This town had been granted by Lieutenant-Governor Wentworth in 1727.

rule, the Masonian proprietors granted out their land in the form of townships to a number of grantees, reserving to themselves only a certain number of shares therein. A few tracts, however, were not granted in this way but were reserved for the proprietors and divided among them into fifteen equal parts. As the individual proprietors sold or improved the lands falling to them, settlements within such tracts were started. The towns of Alton and Allenstown, the large tract long known as Society Land, several small gores, and the islands in Lake Winnepesaukee were all disposed of in this way.[1] In disposing, too, of small gores between townships, which could not be conveniently divided into the requisite number of shares, it was customary to sell the tract direct and then distribute among the proprietors the money that was received from such sales.

In 1751 the proprietors had part of their western boundary line officially marked out by a surveyor named Blanchard. This was done, it was said, with the consent of the government of New Hampshire. Beginning at a point on the southern boundary of the province, at the southwest corner of Monadnock No. 4 (now FitzWilliam), it ran north along the western boundary of that town and four others that had been previously laid out by the proprietary, then cut through Lake Sunapee and was continued until Baker's Pond (now Newfound Lake) was reached. This was a curved line, as the proprietors contended that no other line could be drawn which would preserve a uniform distance of sixty miles from the sea as described in the grant to Mason.[2] Mason's patent described a distance of sixty miles up into the country from the sea on the north and south sides of New Hampshire and a line to cross over

[1] *New Hampshire State Papers*, vol. xxviii, preface, p. 6.

[2] *Ibid.*, vol. xxix, pp. 30, 65, 307, 381, 438, 444.

from the end of one line of sixty miles to the end of the other line of sixty miles. In 1768 the line was run from the northeasterly boundary of the province to the Pemigiwasset river in the town of Campton, and in 1769 the proprietors ordered it continued from that point to the southwestern boundary of their grant, bordering on Massachusetts, directions being given to make such marks and erect such monuments on the line as would make it known.[1] On both of the plans returned by the surveyor it is stated that the work was done "at the request of the Masonian proprietors in pursuance of the verbal agreement of the surveyor-general of the province."

Although the terms and conditions mentioned in the different town grants varied, it may be said in general that each town consisted of a tract of land usually equivalent in area to six miles square. This was divided up into a certain number of equal shares or rights, some of which were specially reserved for the Masonian proprietors and for certain public uses. The proprietors' shares were exempted from all charges and assessments until improved by their owners or disposed of to others. One share or right was reserved for the encouragement of the first minister who settled in the town, another for the support of the ministry, and one for the support of a school. As these three shares were for the common benefit of the inhabitants, they were not, as a rule, drawn for, but located where the grantees concluded they would best answer the purposes for which they were granted. All the other shares were always drawn for by lot. In every grant provision was made for the gradual settlement of the township within a specified time, a longer or shorter time for compliance being designated

[1] *New Hampshire State Papers*, vol. xxix, p. 308; see map, p. 306.

according as the land was near to or remote from the settled portions of the province or was by nature of such a character as to prevent a speedy settlement.[1] All white pines fit for the royal navy were specially reserved to the crown. No quit-rent was charged, nor, in fact, any other rent, the only compensation which the grantors received being from the sale of the land which was specially reserved for them in each township. The more, therefore, they encouraged the settlements and the larger and faster they grew, the greater was apt to be the return, because of the increased value of the reserved lots. In case any lawsuit arose over the title to the land, the grantors guaranteed to defend it at their own expense, and carry the matter through to a final issue, but in case the suit was finally decided against them, it was stipulated that the grantees should recover no damages. It was generally provided, too, that if an Indian war broke out the grantees should have additional time to fulfil the conditions of settlement. The land which each grantor and grantee received as their respective shares of the grant did not lie all in one tract, but was situated in two or three different parts of the township, corresponding with the number of ranges into which the township was divided, each range being cut up into sections or lots which each grantor and grantee had to draw for. Sometimes two lots were also reserved for the lawyers who were employed by the proprietors. This was to compensate them for their legal services. Occasionally lots were also set aside to compensate various persons who had charges against the proprietors. Often a certain amount of land was reserved for the main roads, and between the lots of each range a smaller amount was left for cross roads. In other cases, however,

[1] *New Hampshire State Papers*, vol. xxix, pp. 245, 444.

it was simply stipulated that there should be as many roads as were deemed necessary, the charge for opening which was not to be assessed against the abutting property owners. It was generally provided that a plan of the lots should be made by the grantees and lodged with the grantors. Moreover, each grantee was required to pay for forwarding the settlement all such sums as were ordered by a majority vote of their own number, and if any one refused to pay the sum assessed against him, so much of his land was to be sold as would be sufficient to meet the assessment. If any one failed to fulfil the conditions of the grant, his share reverted in some cases to the grantors and in other cases to the other grantees, who were then obliged to have the land improved. If the terms of the grant were not complied with, the land reverted to the grantors, and could be re-granted. Often, upon petition of the grantees, additional time was given the latter to meet the conditions of settlement. Quite often the lands, after reverting to the grantors, were re-granted to others. Those, however, who had fulfilled the conditions of settlement were generally included among the new grantees or else their lands were specially reserved for them. The various grants also provided that a meeting-house should be built and a regular minister maintained by the town within a specified number of years, and a certain number of acres of land [1] was set aside for a meeting-house and a school, for a training field, burying ground and for other public uses.[1] In some of the grants a number of acres was specially reserved for the person who would undertake to build a mill and saw the logs of the settlers to the halves for a designated number of years, but if no one offered to build the mill, it was stipulated that the grantees should do it at the common charge. In a few cases it was provided

[1] Generally from 6 to 10 acres.

that no obstructions should be built in the rivers to prevent or hinder the passage of fish. None of the grants conferred either political or municipal privileges upon the grantees, for the Masonian proprietors had no power to bestow governmental powers. Such powers were obtained from the legislature or the governor, generally upon petition of the inhabitants.

When, toward the close of the seventh decade of the century, the proprietors marked out the northern boundary of their grant, from a point sixty miles from the mouth of the Piscataqua, it was found that it ran through several townships which had been previously granted by the governor and council. The result was that controversies arose which continued for many years. Sometimes a compromise was effected, but in other cases the disputes were still unsettled when the Revolution broke out. After the close of the war with England, some of those who held under grants from the crown petitioned the legislature to have the limits of the Masonian grant officially determined.[1] About the same time the heirs of Allen revived their claim and began to push it with considerable vigor. They, too, petitioned to have the head line of their patent established.[2] At length the legislature appointed a committee to ascertain what waste or unimproved lands belonged to the state. In accordance with the recommendations of this committee, an act was passed in 1787 empowering a committee to determine and mark out the western line of the Masonian patent.[3] To effect this object the committee was authorized to confer with the Masonian proprietors and run the line in accordance with the terms of such an agreement as both might

[1] *New Hampshire State Papers*, vol. xviii, pp. 767, 768.

[2] *Ibid.*, vol. xviii, p. 769.

[3] *Ibid.*, vol. xviii, p. 785; vol. xxix, p. 335.

consent to, but if no agreement could be reached, the committee was to proceed alone with the work "agreeably to the tenor and construction of the original grant."

Although both agreed that the terminal points of the western bounds of the patent should be sixty miles from the sea, there was a difference of opinion as to whether it should be a straight or a curved line. The state, on the one hand, contended that the line joining the terminal points should be straight, because there was nothing in the grant to Mason to warrant the assumption that it should be a curved line. The Masonian proprietors, on the other hand, claimed it should be a curved line, inasmuch as it was impossible to describe any other line which would make the western limits of the grant at each and every point sixty miles from the sea. As no agreement could be reached on this point, it was decided that surveyors should find out where on the northeasterly and on the southern boundaries of the state the terminal points would fall, and then run and mark out the straight line between them which would form the western boundary of the grant. Accordingly surveyors were appointed who finished the work in June.[1] This was followed by the passage of an act, on the 28th of the month, confirming to *bona fide* purchasers all the lands which they possessed between the straight and the curved lines irrespective of the party from whom they had obtained their titles.[2]

[1] *New Hampshire State Papers*, vol. xxix, pp. 338, 438. According to the plan submitted by the state's surveyors, the terminal points which they designated as 60 miles distant from the sea did not coincide with those which the Masonian proprietors used in describing their western boundary line. There was a difference of about 10 miles in each case, the terminal points of the Masonian proprietors were, according to this plan, 70 miles from the sea. See map, p. 338.

[2] *Ibid.*, vol. xxix, p. 337.

Although the Masonian proprietors protested against any alteration being made in their western line, still they realized that the government was no longer in the hands of those who looked with favor upon their claim. They therefore decided to compromise the matter rather than continue the fight in the legislature and resort to tedious and expensive litigation.[1] Accordingly negotiations were commenced with the government, which resulted in an agreement, in June, 1788, whereby the state released to the Masonian proprietors all its right and title to the lands between the straight and curved lines which the proprietors still claimed, in consideration of the payment, with interest, of $800 in specie within a year and $40,000 in state notes within four years.[2]

Notwithstanding the fact that the Masonian proprietors repeatedly warned the inhabitants not to purchase any lands from the heirs of Allen, the latter continued to find purchasers for some of the tracts which they offered for sale. As a result, considerable confusion and uneasiness was caused and many disputes and lawsuits were threatened. To avoid further litigation, and at the same time render their title to the lands the more secure, the representatives of eleven of the fifteen shares into which the Masonian proprietary was divided deemed it best to come to a settlement with Allen's heirs, who had attached to their interest several gentlemen of influence and property in New Hampshire. Accordingly, by virtue of a deed, dated the 28th of January, 1790, the latter relinquished all their interest in and title to the lands east of the straight line which belonged to the eleven shares, upon condition that such tracts

[1] *New Hampshire State Papers*, vol. xxix, pp. 338, 598, 599.

[2] *Ibid.*, vol. xxix, pp. 340, 342, 601, 606, 654. Deed dated June 18th.

as were specially mentioned and reserved in the deed, amounting in all to some 8,500 acres,[1] were given to them.

From this time on the course of affairs as far as the Masonian proprietors were concerned was uneventful. They gradually granted to others, or divided among themselves, the lands which still remained in their possession, and at last their meetings ceased because there was no further corporate business to transact.

[1] *New Hampshire State Papers*, vol. xxix, p. 345.

CHAPTER V

FINANCE

ALTHOUGH the early settlers brought some money with them from England, it was by no means sufficient to answer the ordinary purposes of trade. The result was that they were compelled to resort to a system of barter. On account of the scarcity of money, taxes, during the seventeenth and part of the eighteenth century, were regularly payable in such country produce and such staple commodities as were designated by law, the prices at which they were receivable at the treasury being regulated generally from year to year. Usually a liberal discount was allowed to those who paid their rates in money. As commerce increased and more and more ships engaged in voyages to Portugal and Spain and to the latter's possessions in the West Indies, considerable sums in Spanish and Portuguese coins found their way into the country, but, inasmuch as the balance of trade with Great Britain was heavily against the colonies, the money soon flowed away through that channel in obedience to the natural laws of trade, notwithstanding the fact that acts were framed for the express purpose of keeping such coins in the country. It was with the view of relieving the long-felt want for more money to meet the growing requirements of trade and business that Massachusetts was induced, about the middle of the seventeenth century, to establish a mint, and it was with the hope of bringing plenty of money into the country that the legislatures of the different colonies enacted laws placing

upon foreign coins a higher value than that which they would bring at the current rates of exchange in the open market. As the rates designated in the different acts, however, varied considerably, great confusion and inconvenience naturally arose. Finally, it became necessary to put a stop to the practice. Accordingly, in 1704, the queen issued a proclamation fixing the rates at which the various coins should pass in the North American colonies, and in 1709 Parliament passed an act to the same effect. This, however, did not prove effective.

About the same time, partly on account of the growing difficulties experienced in collecting the heavy taxes necessitated by the war and partly in consequence of the inability of the inhabitants to raise such sums as were needed for its more vigorous prosecution, the province began to issue paper bills upon the credit of the government. These rapidly obtained a very general currency. In fact, from this time on until the close of the last war with France they constituted the regular medium of exchange, and for a good part of the period taxes were regularly paid in them instead of in the produce and commodities of the province. During the third decade of the century the Crown, in order to prevent the many inconveniences which arose in consequence of the falling credit of the paper bills, issued instructions forbidding governors to approve any further emissions except for the actual support of the government. The demand for more money, however, became so great that when governors did not yield to the pressure that was brought to bear upon them both by the assembly and by the inhabitants, private companies sometimes attempted to furnish the required medium. As it became more and more difficult to convert produce or property into bills for the payment of taxes, the assembly was practically forced at last to allow the latter to be paid in such produce and

commodities as it designated, and this continued to be the course pursued until the close of Benning Wentworth's administration.

As it was found impossible to devise measures that would stop the depreciation of the bills and restore their credit, bills of a new form and tenor were issued in 1742. To differentiate them from those previously issued they were called "new tenor bills," and in value they were made equal to a specified amount of coined silver of sterling alloy. At first they were worth as much as the same amount of proclamation money, but over-issues soon caused their credit to fall, and when Massachusetts redeemed her paper money after the close of the third inter-colonial war and put the currency of that colony upon a gold and silver basis, the depreciation was more rapid than ever. At last the bills would no longer answer the purposes of money. In order, therefore, to defray the heavy expenses incurred during the last war with France, the province was compelled to adopt a new form of bill. This not only expressed on its face its value in sterling, but it bore interest and was redeemable in silver or gold or in bills of exchange within a definite period. These bills were generally known as "sterling bills." After the conclusion of peace no more bills were issued, and all those that were in circulation were redeemed as rapidly as circumstances would allow. At the same time, steps were taken to restore specie payments and make silver and gold a legal tender in all payments and business transactions.

In all but two of the commissions that were issued for the government of New Hampshire the right of the general assembly to provide for the proper support and maintenance of the government was conceded. The commissions that President Dudley and Governor Andros received were the only exceptions, and in neither of these was there

any provision for an assembly. The provision relating to the subject in the first royal commission [1] was to the effect that the president and council should continue such taxes and impositions as had been, or were then, laid upon the inhabitants until the general assembly, which was to be summoned within three months after the inauguration of the new government, should convene and agree upon other methods of raising a revenue. Accordingly, when the first assembly met in March, 1680, the question of defraying the expenses of the government was at once taken under consideration. At length a law was passed providing that they should be met for the time being by a tax on the polls and estates of one and a half pence in the pound.[2] Agreeable to the practice pursued in Massachusetts, the law applied only to the collection of the one rate named in it and had its full effect as soon as that was gathered. As succeeding assemblies pursued the same policy, similar measures were from time to time enacted, the rate, as a rule, being so fixed that only the immediate demands of the moment could be met. The result was that there was hardly ever a surplus in the treasury, while quite often it happened that there was a considerable deficit. In consequence, also, of the temporary nature of the grants, frequent sessions of the assembly became necessary. Inasmuch as the demands made upon the government naturally varied, it follows that the rates also varied. Thus, in March, 1680, and again in March, 1681, the rate was fixed at one and a half pence in the pound, while but two months later a rate of two pence was ordered. The following March the rate was only one penny in the pound, while the first assembly that met under Cranfield prescribed a rate of four pence.[3]

[1] *New Hampshire Provincial Papers*, vol. i, p. 379.

[2] *Laws of New Hampshire*, vol. i, p. 28.

[3] *Ibid.*, vol. i, pp. 28, 39, 40, 47, 64.

In the latter's commission the provision relating to the support of the government was substantially the same as that contained in the previous commission.[1] It was also provided that all public moneys should be paid out of the treasury only upon a warrant issued by the executive, by and with the advice and consent of the council. According to the instructions, however, the governor was to permit the assembly to view and examine the accounts of any money disposed of by virtue of such laws as were passed by it.[2]

In January, 1683, Cranfield presented to the lower house for approval several laws which had already passed the council. In the form in which they were presented the representatives refused to pass any of them, while some they rejected entirely.[3] Among them was one for raising a revenue. As the governor could not prevail upon the lower house to approve the measure, and the relations between the two became so strained that it was impossible to accomplish anything, the assembly was dissolved. A few days later[4] Cranfield, in a letter to the Board of Trade, declared his intention of raising a revenue without the assembly's assistance or coöperation, saying that as the latter had not done its duty to the king in that matter, he, with the council's consent, would continue, "as directed by his Majesty's commission," the impositions that had but recently been laid upon the inhabitants. But a year elapsed before the preliminary steps in that direction were taken. In the meantime he resorted to various devices to obtain money, but these did not produce sufficient for the purposes he had

[1] *Provincial Papers*, vol. i, p. 440. [2] *Ibid.*, vol. i, p. 443.

[3] *Ibid.*, vol. i, p. 493.

[4] *Ibid.*, vol. i, p. 526; *Laws of New Hampshire*, vol. i, p. 807. Assembly dissolved Jan. 20th; letter dated, Jan. 23d.

in view. At last, in January, 1684, a committee of the council was appointed to find out what money had been formerly levied upon the people for the support of the government.[1] After the committee had presented its report and intelligence was received from Casco that the Indians were meditating a sudden attack upon the English in Maine, an order[2] was passed continuing the taxes and impositions formerly laid upon the inhabitants, in order that the necessary charges of the government might be defrayed and the province put in a state of defence. For a time, however, the publication of the order was suspended, as it was not deemed either expedient or safe to put it into execution. Moreover, some of the council had yet to be won over, several being of the opinion that the general assembly alone was authorized to raise money.[3] Finally, in May the warrants for the collection of the money were placed in the hands of the constables, but when the latter demanded the rate, the people refused to pay on the ground that it had not been sanctioned by the assembly.[4] Although greatly disappointed, the governor did not allow the matter to drop, for he believed that the constables had been in a combination not to collect the money. Accordingly, some months later, the provost marshal, his own appointee and a person upon whom he could rely for the faithful performance of any duty entrusted to him, was ordered to make the collection. But he met with as little success as the constables before him, and encountered such opposition and was threatened with such violence that he was forced to desist.[5] The

[1] *Laws of New Hampshire*, vol. i, p. 85; *Provincial Papers*, vol. i, p. 475.

[2] *Ibid.*, vol. i, p. 488. Feb. 14, 1684. [3] *Ibid.*, vol. i, p. 529.

[4] *Laws of New Hampshire*, vol. i, p. 89; *Provincial Papers*, vol. i, pp. 490, 543, 544.

[5] *Laws of New Hampshire*, vol. i, p. 90; *Provincial Papers*, vol. i, pp. 543, 551, *passim*.

attempt, therefore, to raise money without the coöperation and approval of the assembly was a complete failure, so much so that no governor thereafter ever made any attempt to raise money in that way.

During the administrations of President Dudley and Governor Andros the inhabitants had absolutely no voice in the matter of either raising money or disposing of it. A short time after the publication of his commission, President Dudley, with the concurrence of the council, issued orders continuing, until the king's pleasure was known, several of the duties imposed under the laws of Massachusetts.[1]

Although the commission which Andros received granted him, with the advice and consent of the council, full power to impose and levy such rates and taxes as he should find necessary,[2] still the instructions forbade him to avail himself of this power until he had submitted to the king a full report on the question of the revenue and had received further instructions from his Majesty. In the report he was not only to describe the nature and quality of the various rates, taxes and impositions and the methods of collection, but he was to state also what additional taxes were necessary and what sum would be required to defray the annual charges of the government. In the meantime he was to continue such taxes and impositions as had been, or were then, laid upon the inhabitants.[3] Accordingly, in January, 1687, less than a month after his accession to office, an order was published for the collection of a single country rate of one penny in the pound. In March [4] this was fol-

[1] What these duties were, see *Laws of New Hampshire*, vol. i, pp. 109, 110. June, 1686.

[2] *Ibid.*, vol. i, p. 148; *Provincial Papers*, vol. ii, p. 4.

[3] *Laws of New Hampshire*, vol. i, pp. 159, 246.

[4] *Provincial Papers*, vol. ii, p. 19; *Laws of New Hampshire*, vol. i, p. 185.

lowed by the passage of an act continuing in force several duties and imposts as formerly levied, while a little later an order was promulgated continuing in force the tax on shipping.

In due time Andros forwarded home his report on the revenue question. According to him the various taxes, excise and impost duties, and country rates fell short of producing the necessary revenue required for the honorable support of the government by about £875.[1] The governor, therefore, recommended, as "the easiest and best way to advance the revenue," that certain increases be made in the impost and excise duties, and suggested that, instead of levying country rates, which, besides being unequal and different in various sections of the territory, occasioned great expense in collecting, such a lump sum should be apportioned annually among the several counties and towns as would be necessary to meet any deficit that there might be in the revenue.

In England the report was received with approval, and the recommendations concerning the increase in some of the duties were adopted. Accordingly, the governor was informed that the customs, excise and import duties, country rates and all other duties already levied or proposed should be settled and collected for the maintenance of the government. Furthermore, in order that the crown might know that the revenue was properly applied, an account of it was ordered sent home every six months. As most of the duties and impositions had already been settled and continued in force, it was only necessary, upon the receipt of the royal orders, to pass an act putting into effect the additional duties of import and excise as recommended by the governor and approved by the king.[2]

[1] *Laws of New Hampshire*, vol. i, pp. 175, 177, 178.

[2] *Ibid.*, vol. i, p. 215; *Provincial Papers*, vol. ii, p. 17.

Soon after the overthrow of the Andros government in the spring of 1689 affairs in New Hampshire became very unsettled. As the Indians began their ravages along the frontiers the need of some central authority was strongly felt, and this became more pressing and urgent the longer hostilities lasted. Finally steps were taken to establish a form of government for the province which would enable it to take some concerted action against the enemy and raise sufficient money to prosecute the war with vigor. Accordingly a scheme of representative government was devised, the officers of which were to be elected directly by the people, but on account of the hostility of a faction in Hampton the scheme fell through.[1] As many of the inhabitants, however, realized how helpless the province was under the circumstances, they forwarded to the governor and council of Massachusetts a petition praying that they might be received under their protection as formerly.[2] Furthermore, they agreed to submit fully to their authority and to pay an equal proportion, according to their capacity, of the charges that would arise in defending the country against the common enemy. The petition being favorably received, they were soon taken under the care of the Boston government, and upon the same conditions, too, as were enjoyed by the inhabitants of that colony.[3] At the same time the list of military and civil officers, which had been submitted to the General Court for approval, was confirmed. Among the officers was Samuel Penhallow, who was designated as the treasurer of the province. It was then ordered[4] that the justices of the peace

[1] *Laws of New Hampshire*, vol. i, p. 260; *Provincial Papers*, vol. ii, pp. 44–45.

[2] *Ibid.*, vol. ii, p. 35; *Laws of New Hampshire*, vol. i, pp. 261, 371.

[3] *Provincial Papers*, vol. ii, p. 41.

[4] *Ibid.*, vol. ii, p. 42.

should be directed to send forth particular summons to their respective towns to choose and empower two persons from each place to assemble with them to take effectual care to have the claims and accounts of all public matters adjusted and a present assessment and levy made upon the inhabitants in such way and manner as they should deem best—the sum so raised to be paid into the provincial treasury and issued for the payment of the various debts. The following June an order was passed stating that, as it was but just and fair that the inhabitants of New Hampshire should bear "a proportionable part of the public charge," the same rates that had been recently levied in Massachusetts should be collected in that province also.[1]

The union with Massachusetts continued until the summer of 1692, when John Usher arrived in the province and entered upon the government, by virtue of a commission, designating Samuel Allen as the governor and himself as the lieutenant-governor of New Hampshire. In this commission, as well as in all the later commissions, no provisions were inserted pertaining to the question of raising a revenue.[2] An assembly, however, was always conceded, and it is apparent from the instructions that the crown recognized and conceded the right of the assembly to enact laws upon that subject,[3] for it was provided, for instance, that no law should be passed whereby the revenue might be lessened or impaired without the king's special commands. Then, again, all laws for the good government and support of the province were to be made indefinite and without limitation of time, unless the same were temporary and expired and

[1] *Laws of New Hampshire*, vol. i, p. 425.

[2] *Provincial Papers*, *e. g.*, vol. ii, pp. 57, 305, 366; vol. vi, p. 908; vol. xviii, pp. 11, 17.

[3] *Ibid.*, vol. ii, p. 66.

had their full effect within a certain period.[1] Furthermore, permission was given the assembly, as heretofore, to view and examine from time to time all accounts of money disposed of by virtue of such laws as were then in force or might be passed by them.[2] As in the past, public moneys raised for the support of the government could only be issued out of the treasury upon a warrant, signed by the governor, by and with the consent of the council.

Although Allen's commission, unlike the previous ones, said nothing about continuing, even temporarily, the taxes and impositions already laid upon the inhabitants, nevertheless, when Usher assumed the reins of government, he issued an order [3] continuing all acts relating to the public revenue. When, however, he asked the council what laws and revenue were then "to be of force and continued," the latter made the reply [4] that, "considering the many resolutions and changes of late in this province for several years past, they are of the opinion that there were no laws nor standing revenue in this province when the lieutenant-governor arrived here, so that what is necessary for the king's service and the support of his government are to be enacted by the lieutenant-governor, council and assembly." Accordingly, soon after the assembly met in October, a committee of the two houses was appointed to establish a settled revenue for the province.[5] As a result, two bills were passed for the support of the government and the prosecution of the war against the Indians.[6] One levied a rate upon the polls and estates, while the other provided,

[1] *Provincial Papers*, vol. ii, p. 65.

[2] *Ibid.*, vol. ii, pp. 65, 310, 373, *passim*.

[3] *Ibid.*, vol. ii, p. 71.

[4] *Laws of New Hampshire*, vol. i, p. 518.

[5] *Ibid.*, vol. iii, p. 4.

[6] *Ibid.*, vol. iii, pp. 165, 168.

first, that certain import duties should be paid upon wine, brandy, rum and other strong liquors; second, that all goods, wares and merchandise imported into the province, except fish, sheep, wove-cotton, wool, salt and provisions should be subject to certain duties according to their valuation; third, that all vessels of more than thirty tons burden, except those the majority of whose owners were residents of the province, should pay a duty of eighteen pence per ton or one pound of good powder for the supply of the fort; and fourth, that certain excise duties should be levied upon all wines, brandies and other distilled liquors, as well as on cider, ale and beer sold by retail in the colony. Like the revenue acts of the previous assemblies, these were temporary in character, the first being applicable only to the collection of the rate designated in it, while the second was to continue in force for only one year. In fact, throughout the provincial period, the revenue acts were always temporary in character.

For a great many years the revenue raised to defray the expenses of the government continued to be obtained both by reviving and continuing in force from year to year in an amended form the above-mentioned act designating the impost, excise and tonnage duties, and by levying such taxes upon the polls and estates as were from time to time found necessary.[1] The latter was the chief source of the revenue and the main support of the government. Naturally, also, owing to a great variety of circumstances, it varied most widely, being particularly heavy in time of war.

In March, 1693, instead of conforming to the custom, hitherto followed, of levying upon all polls and estates a rate which it was estimated would be sufficient to produce

[1] *Laws of New Hampshire*, vol. i, pp. 566, 583, 592, 605, 659, 674, *passim; Provincial Papers*, vol. iii, 14, 24, 32, 198, 208, 211, 237, *passim*.

the sum desired, the assembly designated in the act the total number of pounds that was to be raised by the tax and apportioned among the different towns the sums which each had to pay.[1]

On account of the growing charges caused by the continuation of hostilities, the amount specified in the act then passed was £600, which was so apportioned among the four towns that Portsmouth was to pay £210, Hampton £200, Dover £110, and Exeter £80. This proved far more satisfactory than the method formerly employed, in that there was no uncertainty in regard to the amount that was to be paid into the treasury, and from this time on the amount to be raised was always inserted in the different acts.

In August, 1693, the amount ordered raised by an act then passed was £200, while in November, 1694, the sum designated was £700. The next year £300 was ordered levied in September, and two months later an act for £400 more was passed. In the autumn of 1696, £600 was ordered raised, and in July of the following year an act for levying £650 was passed. In the fall this was followed by the passage of another act for raising £300 more, while the very next spring the sum specified in the bill then enacted was £400.[2] The amounts designated in these acts, all of which were passed during the period covered by Allen's commission, show clearly how the tax fluctuated from year to year, while it is quite evident from the dates of their passage that such acts were not passed at any regular intervals, but only at such times as the occasion and the demands of the moment required.

[1] *Provincial Papers*, vol. iii, pp. 79, 195; *Laws of New Hampshire*, vol. i, p. 554.

[2] *Provincial Papers*, vol. iii, pp. 32, 34, 38, 46, 53, 56, 61, 203, 207; *Laws of New Hampshire*, vol. i, pp. 563, 573, 577, 578, 583, 585, 591, 603.

Although it was true, as Usher said,[1] that the taxes and rates in New Hampshire were not as great as those imposed in Massachusetts, still it must be borne carefully in mind that the circumstances and conditions of the two provinces were different. Massachusetts, on the one hand, was populous, her trade was quite extensive, and many of her towns were secure from attack, so that the war in those localities did not interfere to any great extent with trade and commerce. New Hampshire, on the other hand, was very sparsely settled, her resources were very limited, and her towns were directly exposed to the enemy, so that during the war the pursuits usually followed in time of peace were greatly curtailed, and during the periods when the enemy were particularly active, were practically suspended, for it was not then safe to carry them on. Furthermore, a great many of the able-bodied men were on those occasions called into service to defend the garrisons, do scout duty and pursue the enemy. At times, it is true, Massachusetts generously assisted the province, but this was no more than fair when it is considered that the protection thus afforded secured some of her own towns from attack. Handicapped, therefore, as the colony undoubtedly was, it is not surprising to find that the assembly failed to provide sufficient funds to put the province in the best posture of defence. Thus, in May, 1694, Usher, besides pressing the assembly to provide for the payment of the province debts, recommended for consideration what a committee of the council, after an investigation, reported as necessary, viz., that £500 should be spent to increase the strength of the fort and secure the king's stores, but the assembly could not be prevailed upon at that time to raise any money, so that the

[1] *Provincial Papers*, vol. iii, p. 33.

lieutenant-governor promptly dissolved it.[1] When a new assembly was summoned in the fall, the matter was again recommended for consideration, but the most that the representatives would do was to pass an act for £700, which they conceived would be sufficient, with the revenue then in the treasury and that arising from the impost and excise duties, to discharge the province debts and maintain sixty men for six months on the frontier.[2] As for the other matters laid before them, they said that under the circumstances the province was not capable of raising supplies for those purposes, as the rate then made was the greatest that was ever made in the colony, notwithstanding the fact that the province was greatly wasted and impoverished by the war. They, therefore, desired the governor and council to inform their Majesties of their "most deplorable condition" and prayed that "such methods may be taken for the preservation and defence of the province as they with the advice of their most honorable Privy Council, shall think meet."[3]

When the lieutenant governor, in November, 1695, pressed the representatives to make some provision for his support and provide means for the security of the colony and the payment of the province debts,[4] the latter replied that the present state of the country was such as to force them to apply themselves solely to the raising of such money as was needed for purposes of defence. As this fell far short of what was actually necessary, they were not in a position to do anything toward the support of the honor of the government, although sensible that the lieutenant governor had been at great charge. They, therefore, requested him, with the advice of the council, to lay before

[1] *Provincial Papers*, vol. ii, pp. 120, 138; vol. iii, pp. 22, 23.

[2] *Ibid.*, vol. iii, pp. 25, 27.

[3] *Ibid.*, vol. ii, p. 121.

[4] *Ibid.*, vol. iii, pp. 33, 35.

the king the poverty and danger of the province, in order that such methods might be taken for the support and defence of the same as his Majesty should think best. Thereupon Usher proposed that certain duties, which he designated, should be laid on boards and staves, English goods, rum and wine. Although the members of the lower house did not accept the particular duties proposed, still they voted to impose for one year certain export duties on boards, staves, masts and bowsprits and an additional impost on wine and rum, but only on condition that the lieutenant governor and the council would join them in petitioning the king to annex them to Massachusetts inasmuch as the inhabitants were not able to support a separate government. This proposal however Usher refused to consider, so that the only revenue bill that passed was one for raising £400 to pay the Massachusetts soldiers that were detached for service in New Hampshire.[1]

In July, 1696,[2] Usher objected to a revenue bill on the ground that its provisions infringed the prerogative. The bill in question was one for raising £600 which, in addition to providing for the wages and subsistance of the men which had been engaged in the service, provided also for the support of thirty men who were to be hired for three months to range the frontiers. When this came before the lieutenant governor, he sent for the representatives and desired to know whether any men that might be impressed by him, in addition to the thirty named in the act, would be paid out of the £600. On being told that they would not be paid out of that money, he declared that, in his judgment, it was an infringement of the prerogative to allow only thirty men when more were absolutely necessary. He therefore ac-

[1] *Provincial Papers*, vol. iii, p. 38. November, 1695.

[2] *Ibid.*, vol. iii, p. 41.

quainted them, that unless "they would put the thirty men and grant the bill in general for his Majesty's fort and payment of the king's soldiers in service," he would not accept the measure. After considering the matter, the representatives replied that they could not alter it, whereupon Usher dissolved them saying that "they were going about to deprive him of the power of the king's prerogative."

When another assembly met in the fall, Usher told the newly elected delegates, that, had he not advanced, out of his own pocket,[1] money for provisions for the frontier garrisons, the soldiers there posted would have been drawn off and the places left to the enemy.[2] At the same time, he urged them to provide for the province debts and for the security of the fort and the king's stores, and pressed them to make some provision also for the wages and subsistence of the soldiers for some time to come. Although the representatives knew that the debts amounted to more than £700 and realized that the expenses during the winter would probably amount to as much more, still they returned word that, owing to their poverty, the scarcity of corn and the poor prospects of reaping any better crop that year, they were not able to raise more than £600.[3] The council then sent down a vote that the king should be addressed to send over a general governor and annex them as he saw fit. After approving the £600 bill, Usher recommended that some provision should be made for his support, as he had already served the province for four years without receiving a penny for his services, but the house returned practically the same answer as it did on a similar occasion the previous

[1] *Provincial Papers*, vol. iii, p. 42. September, 1696.

[2] *Ibid.*, vol. ii, pp. 181, 188. It appears from the records that Usher advanced £13 : 12 in April and £57 : 9 in June.

[3] *Ibid.*, vol. iii, pp. 44, 45.

November, and again implored the lieutenant governor to inform the king that it would be best for the defence of the province to be annexed to Massachusetts.[1]

As no provision had been made for the subsistence and pay of the soldiers during the winter and hostilities still continued, an assembly had to be called the following June to raise more money.[2] An act for levying £650 was then passed but, as this fell far short of paying the debts and the charges that would accrue during the summer, another session was necessary in the autumn, when the representatives were prevailed upon to raise £300.[3] Notwithstanding the fact that all matters connected with the defence of the province had been conducted in the most frugal and economical manner, the colony still continued in debt, so that in the spring of 1698 the legislature ordered £400 more raised towards defraying the public charges.[4]

The truce that followed the treaty of Ryswick relieved the inhabitants from the great strain under which they had been living for several years past and gave the province a chance to recover somewhat from the effects of the war, while the plentiful harvests with which the people were blessed in the years immediately succeeding the ratification of the treaty greatly improved the conditions prevailing in the colony.[5]

When Bellomont arrived in the province in August, 1699, the people hailed him with great joy. This was significant, for it was in sharp contrast to the coolness with which Allen had been received the year before. The former was looked upon as a friend and well-wisher of the colony while

[1] *Provincial Papers*, vol. iii, p. 47. [2] *Ibid.*, vol. iii, pp. 51, 53, 203.
[3] *Ibid.*, vol. iii, pp. 55, 56. October, 1697; *cf.* vol. ii, p. 257.
[4] *Ibid.*, vol. iii, p. 61. April, 1698.
[5] *Ibid.*, vol. ii, pp. 282, 326.

the latter, as the purchaser of Mason's claim to the soil, was regarded rather in the light of an enemy and as a menace to the welfare of the province. This same feeling, too, is reflected in the action taken by the assembly. Thus, the one, summoned by Allen, declined to consider any matters requisite and necessary for the service of the province[1] except the act relating to the impost, excise and tonnage duties which, as usual, it voted to revive, but, that the governor might have no control over the disposal of the revenue thus raised, it directed that all the money, except that arising from the duty on tonnage, should be reserved and employed for the reception of Lord Bellomont. On the other hand, the assembly that met under the Earl,[2] cheerfully gave him as a token of their esteem, a present of £500, revived as usual the excise, impost and tonnage act and carefully considered many matters of interest and importance, while a few months later, it resolved to provide for the discharge of the public debts by passing an act for raising £460.[3]

With the continuance of peace, the condition of the province steadily improved while the charges incurred by the government declined, so that when the next rate was made in March, 1701, it was found, that, apart from the regular revenue produced by the impost and excise act, but £300 were required to pay off all the province debts accounted to be due by the end of the following May. With the official renewal of the war, upon the accession of Queen Anne, however, the public charges soon began to increase.[4]

As a means of increasing the revenue obtained from in-

[1] *Provincial Papers*, vol. ii, pp. 286, 289, 291.

[2] *Ibid.*, vol. ii, p. 333; vol. iii, p. 86. August, 1699.

[3] *Ibid.*, vol. iii, pp. 90, 91, 94; vol. xix, p. 725. November, 1699.

[4] *Ibid.*, vol. ii, p. 366; vol. iii, pp. 126, 127.

direct taxation, duties were levied in 1702 upon all sorts of goods and merchandize imported into the colony and upon all kinds of lumber exported out of the same. The following year these duties were continued in force and appear to have netted the province a considerable sum.[1] In August, 1704, Governor Dudley told the assembly that he knew of no better article for the advancement of the revenue than the tax on lumber which had not been any hardship the last two years, when the price of lumber was below twenty shillings per thousand, while now that it was almost double that sum, that commodity would be the better able to bear the tax. Now, however, the representatives were opposed to reviving it, claiming that it did not answer the end proposed and bore very heavily upon those engaged in lumbering.[2] At the same time, they expressed themselves in favor of having the public charges defrayed by a tax on the polls and estates, and declared that they were ready to levy such taxes from time to time according to the necessities of the province and the abilities of the inhabitants.

During this administration the regular charges of the government were increased by the assembly granting the governor a salary,[3] and in all succeeding administrations, too, such an item was almost always included among the annual province charges. Sometimes, as in Dudley's case, the assembly passed an act, designating the salary that should be annually paid the executive during his continuance in office. At other times, however, the assembly could not be prevailed upon to bind itself to pay any fixed amount either annually or at any other prescribed time, but, in lieu thereof, passed from time to time such grants as it saw fit. In all

[1] *Provincial Papers*, vol. ii, p. 378; vol. iii, pp. 236, 242, 249, 265.
[2] *Ibid.*, vol. iii, pp. 291, 294. [3] *Ibid.*, vol. iii, p. 308.

cases, however, the governor's salary was paid by the province.

The longer the war continued, the greater were the demands made upon the government. As had often been the case before, the representatives were rather backward in raising the sums needed to pay the province debts, so that the governor was frequently obliged to call their attention to the matter.[1] Complaint was also made that, unlike Massachusetts, the province was not doing its full duty in the prosecution of the war or paying a fair share of the expenses. But the answer made by the house was that the circumstances and conditions prevailing in the two provinces were entirely different.

In July, 1706, the treasurer estimated the province debts at £1356:6, but all that the assembly could be prevailed upon to raise was £700.[2] The following year, the governor declared that, "at the earnest solicitations and motion of the assembly of the province of Massachusetts," he had entered upon an expedition against Nova Scotia and Acadia with the view of making what spoil he could upon the French inhabitants there. As he expected to have some assistance from the other New England colonies, he hoped New Hampshire would take part in the enterprise. This the colony did, but the assembly failed at the time to set aside any funds to pay those that were to engage in the service. Consequently, in May, 1708, Dudley was obliged to tell the house that the matter must no longer be delayed and that provision must also be made for the payment of the other debts.[3] In reply, the representatives said they had just agreed

[1] *Provincial Papers*, vol. iii, pp. 271, 275, 282, 290, 294, 303, 315, 325, 333, 345, 353, *passim*.

[2] *Ibid.*, vol. iii, pp. 325, 327.

[3] *Ibid.*, vol. iii, pp. 339, 357, 361, 366.

to raise the money to pay the officers and soldiers and had also considered the other province charges. Accordingly an act was passed to raise £1100. This was the largest amount that had ever been ordered raised at one time in the history of the province. Still it was not sufficient to discharge all the public debts. Although the charges incurred during the summer in defending the frontiers greatly increased the debt, nevertheless the representatives refused to raise any more money in the fall on the ground that the people were very poor and would be thrown into consternation should another tax be levied before the previous one, a considerable part of which had not yet been gathered, was paid in full.[1]

The next spring, Governor Dudley again pressed them to discharge the province debts and urged them to make some provision also for the expedition then preparing against Canada.[2] But the most that the house would do was to pass an act for raising £1720. Of this amount, £440 (the sum designated for the Canada expedition) was to be raised by the first of September, while the balance was to be paid by the last day of December. The following day,[3] the council unanimously voted "that the representatives be acquainted that we are sensible of the debts due from this government to several persons, soldiers and others, amounting to several hundred pounds contracted by the war in the six years last past; that the council are sensible that the governor in every session hath earnestly moved that the said debts be adjusted and paid; that the representatives have in several sessions promised and chosen committees for ascertaining the debts accordingly but to no effect, and officers and soldiers are daily complaining for want of pay-

[1] *Provincial Papers*, vol. iii, pp. 367, 369.

[2] *Ibid.*, vol. iii, p. 374. May, 1709. [3] *Ibid.*, vol. iii, pp. 379, 382.

ment, upon all which the council desire that this their vote may be entered in the council acts for their justification; that they are ready to adjust and ascertain the debts either by the whole assembly or by committees, and to give their votes for the payment either in this session or the next, and humbly desire that the governor be acquainted with this vote in our own just vindication."

So backward was the province in completing the necessary preparations for the expedition that the executive had just reason to complain.[1] Finally in June, Lieutenant-Governor Usher, after pointing out many things that had yet to be done, declared that it would be necessary to raise an additional £300 for the Canada expedition and at least £100 more for the subsistence of the men engaged at the fort and those employed in ranging the frontiers who were not able to perform their proper duties because there were no provisions for their support and none could be obtained on credit, because those who had advanced provisions the year before had not yet been paid.[2] In reply the representatives said the poverty of the inhabitants was such that one-third of them had no bread to eat nor anything to procure it with. Furthermore, they feared it would be very difficult for the people to pay the £1720 tax, which had yet to be collected, so that an attempt to raise any more money at the present time would put the settlers in such a consternation that they feared all would be in a flame. However, to defray the expenses mentioned in his honor's speech, they declared themselves willing to raise £150. Calling them up for a conference, Usher informed them that the sum mentioned would by no means answer the ends proposed. Furthermore, he said that the council were also of the opin-

[1] *Provincial Papers*, vol. ii, pp. 593, 595; vol. iii, p. 385.

[2] *Ibid.*, vol. iii, pp. 385, 386.

ion that more money must be raised for those purposes, even if they made it payable six, nine or even twelve months hence.[1] The representatives, however, refused to raise an additional sum, simply reiterating what they had already said concerning the poverty of the inhabitants and their inability to pay more. Thereupon, the lieutenant governor, upon the advice of the council, dissolved the assembly and immediately issued a writ for the election of another.

When the newly elected delegates assembled, Usher addressed them in regard to the pressing needs of the province and the necessity of raising money, and proposed that an act be passed, providing that the money needed should be paid into the treasury about nine or twelve months hence, the treasurer in the meantime to take up such a sum on interest as would be needed to meet the various demands that would be made on him. At the council's request, he also communicated to them a letter from the governor in which the latter said,[2] "The worst thing is coming towards the province of New Hampshire that ever yet happened to them, that is, the loss of their reputation with her Majesty and the government. I have here but sixty men of one hundred, and eight of them have already run away; and all your government, civil and military, are not able and therefore not willing to raise them; and the reason is because the assembly has not in time past paid them as they ought; nor will it now raise the money necessary for them, which I must plainly lay before her Majesty, if not now complied with. And there are men in the world," he continued, "who will be glad of such a handle to do their business by. Moreover, if I have not thirty men sent, I am also upon the defence of myself at home. I can boast how I have

[1] *Provincial Papers*, vol. iii, pp. 388, 389, 391.

[2] *Ibid.*, vol. iii, pp. 391, 392. June, 1709.

with five hundred men at a time defended the province with the Massachusetts men and money and am ready always to do it; and expect to be obeyed when her Majesty's commands are so just and good" . . . After taking the matter under consideration, the house concluded in July that it was absolutely necessary to provide £150 and accordingly passed a vote to raise that amount, at the same time stipulating that the writs for the collection of the money should not be issued to the constables until the first day of the following March.[1]

The financial condition of the province was at this time very discouraging. The resources of the country, too, were very limited and its credit very poor. The long continuance of hostilities had practically paralyzed some lines of business and seriously crippled others, while trade and commerce in general had greatly declined. As every part of the province was more or less exposed to the enemy, the war bore heavily on every town. The province debts also were steadily increasing, but, owing to the poverty of the people and their inability to pay large sums in taxes, it had been found impossible to prevail upon the assembly to order such amounts raised by taxation as were necessary to meet all demands. Furthermore, there were no prospects of an early peace, but rather indications of a more vigorous prosecution of the war into the enemies' territory so that, instead of anticipating any diminution in the necessary charges of the government, the signs pointed to a substantial increase. Complaints, too, were many and frequent. Moreover, as those who had been in the service of the province were compelled to remain month after month without their pay, it became more and more difficult to secure men for the defence of the country, while those who

[1] *Provincial Papers*, vol. iii, pp. 395, 396. July, 1709.

had willingly advanced money to the province on former occasions refused to do so any longer because they had to wait so long before being reimbursed.

Such was the condition of affairs when the representatives met in December and again took the matter under consideration. After some deliberation, they came to the conclusion that the best way to relieve the situation and secure the payment of the public debts was by issuing money on the credit of the government. Accordingly, they voted to issue bills of credit, the repayment and redemption of which were to be secured by an act, binding the government to raise by taxation within a certain number of years the amount of the emitted bills.[1] As the governor and council soon signified their concurrence, the necessary act was drafted and passed, whereupon a committee of the two houses was sent to Boston to get the bills printed. To improve the credit of the bills,[2] it was resolved some months later that, in the payment of taxes, they should be received by the treasurer and all the subordinate officers at an advance of 5%. Within a year, however, they had obtained such a general currency that an order was passed to the effect that they should thereafter be received at par.[3] At intervals from this time on until the close of the last war with France, paper bills continued to be emitted on the credit of the government, and although at first they were rather a boon to the province, they were the means later of plunging it into great financial difficulties from which it only emerged a short time before the outbreak of the Revolution.

In order to ascertain the true state of the province debts, some of which were of many years' standing, the legislature,

[1] *Provincial Papers*, vol. iii, pp. 411, 417, 425. December, 1709.

[2] *Ibid.*, vol. iii, p. 430. May, 1710.

[3] *Ibid.*, vol. iii, p. 473; *New Hampshire State Papers*, vol. xix, p. 12.

in February, 1710, directed the committee of audit to appoint a time for the inhabitants to bring in their claims. This being done, a report was submitted to the assembly in May, showing that the sum required to satisfy the various claims, as officially adjusted and approved by the committee up to that time, amounted to more than £2000, while in the fall additional claims aggregating £555 were approved and ordered paid. A few months after provision had been made for the payment of these claims, it was necessary to appoint a committee to consider a great number of other debts, most of which had been contracted during the summer and autumn in consequence of the continuance of the war and the colony's participation in an expedition against Port Royal.[1] According to the report presented to the assembly the following May, the amount of the claims approved up to that time by the committee was £3075: 17: 5, which sum the legislature then ordered paid. During 1711, a good part of the debt then contracted was incurred in defending the province against the inroads of the enemy and in participating in an expedition against Canada. As allowed by the committee of audit at the close of the next fiscal year, it amounted to £2584: 10: 2.[2] Although there was no expedition against the enemy in 1712, the latter was unusually active along the frontiers so that the expense incurred in defending the province against invasion was much greater than it otherwise would have been. The consequence was that the report of the committee of audit showed at the close of the year that the province debts up to that time approved by it amounted to about £1000.[3] With the publication, a few months previous to this, of the royal pro-

[1] *Provincial Papers*, vol. iii, pp. 419, 421, 426, 454, 461.

[2] *Ibid.*, vol. iii, pp. 472, 528.

[3] *Ibid.*, vol. iii, p. 536. December, 1712.

clamation declaring a suspension of arms, the war virtually ended and the province once more entered upon an era of peace which was conducive to its growth and development.[1]

In order to discharge the various debts that had been incurred, it had been found necessary to obtain more money than the act, providing for the emission of the paper bills, called for. This had been obtained sometimes by issuing more bills of credit and sometimes by re-issuing the bills which had been brought into the treasury for the express purpose of sinking previous issues of paper money. Thus, the total amount of new bills issued was £5000 while the bills which had been received in taxes and had then been re-issued were those which had been collected in 1710, 1711, and 1712, amounting in each case to £1000.[2]

As the £1500 tax which was levied in 1713 to redeem some of the bills of credit, had been paid into the treasury in Massachusetts, Rhode Island and Connecticut bills, it was necessary, in order to sink that amount of New Hampshire bills, to exchange them for the latter. In doing this the province would lose money as the credit of the other bills appears to have been higher than that of the local ones. For this reason among others, it was resolved in May, 1714, to loan out the £1500 at interest for a period of two years to such persons as would give good and sufficient land as security for its repayment in New Hampshire bills. Furthermore, to encourage the payment of future taxes in

[1] *Provincial Papers*, vol. ii, p. 644. October, 1712.

[2] *Ibid.*, vol. iii, p. 460. In December, 1710, there was an issue of £2500; vol. iii, pp. 503–5, in October, 1711, an issue of £2000; vol. iii, pp. 533–4, in October, 1712, an issue of £500. *New Hampshire State Papers*, vol. xix, pp. 26, 37. For the money that was re-issued, see *Provincial Papers*, vol. iii, pp. 474, 477, 499, 533, 534; *New Hampshire State Papers*, vol. xix, pp. 12, 24, 37. It should here be said that the paper bills now formed practically the only currency in the province.

local bills, the treasurer was ordered to receive them at an advance of 5%.[1] At the same time, a further emission of £1200 was ordered to discharge the various province debts. In the spring of 1715, £500 of the tax money was ordered repeated, or in other words re-issued, in order to defray the province charges, and this was followed the next year by the repetition of £1500.[2] At the same time, on account of the scarcity of money, an act was passed,[3] suspending until 1723 the payment of one-half of the £2000 which, by virtue of an act of the legislature, was to have been collected in taxes in 1716 to redeem that amount in province bills. The scarcity of money was also the excuse given by those who failed to comply with their obligations with respect to the £1500 which had been let out at interest in 1714.[4] In response to their request for more time, the general assembly granted them liberty to pay the money at any time before October, 1718, provided they gave new bonds payable with interest at the rate of 6% annually, instead of 2½% as formerly.

The great want of a medium to carry on trade and commerce led the house, in January, 1717, to pass a vote for the emission of £10,000.[5] Hitherto bills of credit had only been issued to provide for the discharge of the province debts; now the main purpose in issuing the bills was to ameliorate the conditions due to the great scarcity of money as a medium of exchange. According to the scheme proposed, the £10,000 was to be distributed among the various

[1] *Provincial Papers*, vol. iii, pp. 563, 564.

[2] *Ibid.*, vol. iii, pp. 586, 643, 647; *New Hampshire State Papers*, vol. xix, pp. 62, 86, 88. 1716.

[3] *Provincial Papers*, vol. iii, pp. 644, 647; *New Hampshire State Papers*, vol. xix, pp. 87, 88.

[4] *Provincial Papers*, vol. iii, p. 685. [5] *Ibid.*, vol. iii, p. 671.

towns in proportion to the amount of taxes which each paid into the provincial treasury and the money let out in lots of £300 and less to such persons in those towns as would give as security land of double the value of the bills respectively received by them. For the sums so loaned, interest at the rate of 5% was to be paid annually for a period of twenty-three years, at the end of which time the borrower was relieved of any further payments and acquitted of both principal and interest. Such a scheme had been tried in other colonies and was known in the language of the time as a Land Bank. When the vote reached the council, that body at once approved it and the next day recommended that the amount be raised to £15,000, but before the necessary bill could be perfected, the assembly was dissolved.[1] When another met in May, the scheme was revived, but then the sum proposed was fixed at £15,000 and the rate of interest increased to 10%, while the term for which the bills were to be let out was reduced to eleven years, at the expiration of which period the borrower was forever acquitted of both principal and interest.[2] As before, land of double the value of the money loaned was to be given as security by the borrower. With respect to the distribution of the money, it was provided that a central committee should give to local town committees the share which each town was entitled to receive. The central committee was the committee of the two houses which was authorized in the act to sign the emitted bills, while each local committee consisted of the town's representative in the assembly and such other persons as were duly chosen for that purpose at a regular town meeting. After receiving the money, the local committees were to let it out in lots of not less than £20 and not more than £300 and present at

[1] *Provincial Papers*, vol. iii, pp. 672, 679. [2] *Ibid.*, vol. iii, p. 688.

the end of each year to the central committee a report of the money in their hands. The interest money thus received was then to be burnt in the presence of the entire legislature. In case any of the holders of the bills failed to meet their obligations it was provided that the land mortgaged should be sold, while to encourage the payment of the interest in New Hampshire bills, it was stipulated that all others should be received at a discount of 5%. After the act had passed the two houses, it was presented to the governor who signed it two days later.[1]

The act, however, failed to produce the results anticipated, for money appeared to be as scarce as ever, so that the following spring payment of part of the tax money which was to have been brought in that year and burned to redeem the paper bills, was postponed;[2] and in 1720 and again in 1721 similar action was taken with regard to the tax money which was to have been gathered in those years.[3]

While the question of striking more bills of credit was under consideration in 1721, Governor Shute communicated to the assembly an instruction which he had received from England.[4] This had been issued in September, 1720 in consequence of the many inconveniences that had arisen as a result of the emission, by the various colonies, of bills of credit. According to its terms, governors were forbidden to give their assent to any more acts, providing for the emission of bills of credit, except such as were absolutely necessary to defray the support of the government, unless a clause was inserted suspending their operation until the king's pleas-

[1] *Provincial Papers*, vol. iii, p. 692.

[2] *Ibid.*, vol. iii, pp. 735, 793, 835.

[3] *New Hampshire State Papers*, vol. xix, pp. 120, 145, 146, 161, 165.

[4] *Provincial Papers*, vol. iii, pp. 802, 810, 811, 813, 815, 817; *New Hampshire State Papers*, vol. xix, p. 157.

ure was known. Though the house had been considering the emission of a considerable sum, the production of the instruction effectually put a stop to the further consideration of the matter.

The next year, a committee of the two houses was appointed both to consider the question of bringing into the treasury all the money that had been hitherto postponed and to make an estimate of the province charges incurred since the issue of the royal instruction.[1] According to the report which the committee presented, there had been postponed and drawn out of the treasury, for which provision was now to be made, over £5000, while the debts contracted since the issue of the instruction amounted to £2256: 16: 4, of which but £255 had been paid.[2] Besides this, £800 was required to pay the accruing charges of the government, so that an emission of £2801 was necessary in order to meet all demands. After some deliberation, two acts were passed. One provided for an emission of £5384; the other for an emission of £2800. The first was to be used to exchange the bills that had been issued prior to 1716, the redemption of which had been postponed from time to time and many of which were now very much broken by frequent handling and constant usage; the second was to defray the province debts and the accruing charges of the government.[3] In both cases, however, the new bills were to be placed, not in the hands of the treasurer, but in the hands of those, named by the two houses, who, in the first case, were to exchange them for the bills emitted prior to 1716 and, in the second case, were to issue them to the treasurer in such amounts as were from time to time allowed by the assembly. As had

[1] *Provincial Papers*, vol. iv, pp. 310, 311. May, 1722.

[2] *Ibid.*, vol. iv, pp. 314, 315.

[3] *Ibid.*, vol. iv, pp. 341, 342, 343 *et seq.*

hitherto been the custom, the bills were to be redeemed by levying taxes upon the polls and estates, it being stipulated in the £5384 act that that sum should be redeemed by levying a tax for that amount in five annual instalments beginning with the year 1724, while in the £2800 act it was provided that the bills should be drawn in in two equal instalments in 1729 and 1730. In both instances the tax-money was to be received by persons appointed by the legislature and not paid by the selectmen directly to the treasurer.

When, the following summer, war was officially proclaimed by the governor against the Eastern Indians who had been very uneasy and the cause of considerable trouble for some time past, the assembly was called upon to render such assistance as was necessary to prosecute it with vigor. As there was no money in the treasury for such a purpose, the province was quickly plunged into debt, so that it became necessary in the fall to issue £2000 in paper bills to meet the various demands. As the war continued, considerable sums were required from time to time to pay off the soldiers and provide the means for the protection of the frontier.[1] This was obtained as the occasion required either by emitting the requisite amount in bills of credit or by levying taxes upon the polls and estates.[2]

Although the first paper bills that had been issued by the province circulated at par, they soon began to depreciate, and, despite the attempts that were made to re-establish their credit, they continued to decline in value. At the time that the first bills were issued, silver was worth eight shill-

[1] *Provincial Papers*, vol. iv, pp. 74, 76, 81, 107, 118, 149, 165, 169, 200, 377.

[2] *Ibid.*, vol. iv, pp. 157, 167. December, 1724, £2000; vol. iv, pp. 194, 205. Jan., 1726, £2000; vol. iv, pp. 100, 105. May, 1723, £1000 tax; vol. iv, pp. 139, 145. June, 1724, £500 tax; vol. iv, p. 407. May, 1725, £500 tax.

ings an ounce and for a time this constituted the par of exchange but soon the metal began to rise in all business transactions and continued to increase in value so that by the year 1730 one ounce of silver was worth twenty-one shillings.[1] The depreciation of the bills was due to the operation of several causes. As the paper money issued by the other New England governments was of the same tenor as that emitted in New Hampshire, any action taken by one colony regarding the bills was likely to affect the general credit of all then in circulation, for the bills of the four colonies had a general currency in all. A very important factor to be borne in mind in connection with their depreciation is that the assemblies of all the colonies failed at times to execute promptly the provisions of the various acts of emission. Although it was provided in the different acts that the bills should be redeemed in certain specified years, often under the stress of fiscal necessity due to the scarcity of money and to the pressure of war, the payment of the taxes levied for the redemption of the bills was postponed to some future time or the money that was brought into the treasury to redeem the bills was not consigned to the flames in accordance with the provisions of the act by which it had been collected, but re-issued and used for some entirely different purpose. Naturally this tended to lower the credit of the bills. In fact, anything that interfered with their prompt redemption was likely to produce the same effect. Furthermore, as no limitation of the supply was set by natural forces, the tendency was to increase the amount of the paper money, without giving due consideration to the operation of the natural law of supply and demand. Then, too, it was much easier and far less troublesome to impress more bills than to levy taxes to meet the demands of the govern-

[1] *Collections of the New Hampshire Historical Society*, vol. v, p. 258.

ment. The result was that when the number issued was in excess of the legitimate demands of trade and commerce, depression set in immediately, for such money could find no outlet in international commerce, having no acceptance abroad. Consequently its distribution could not, like the distribution of silver and gold, be automatically regulated through the normal movements of trade with foreign countries. Then, again, as silver and gold were the metals in which foreign balances were discharged, the effect of an over-issue was to put a premium on those metals. Moreover, once depreciation set in, debtors were wont to defer their payments and all other obligations as long as possible in order to take advantage of the constantly depreciating currency. This was virtually equivalent to scaling down their debts. The more rapidly, therefore, the bills depreciated, the greater was the gain to the debtor class and the greater the loss to creditors and to those whose salaries or incomes were numerically the same from year to year. In 1720, the province had a conference with the other New England colonies "about some method to advance the credit of the medium of exchange," but nothing was done.[1] In May, 1725, Lieutenant-Governor Wentworth, in referring to the difficulty under which the ministers of the gospel were laboring by the sinking credit of the paper money, said that the depreciation was such that those that contracted with their parishes ten or twelve years ago for £100 a year now had their salaries virtually reduced by the debasing of the currency to £50 or £60 a year.[2] Furthermore, in calling upon them to devise some method to put a stop to counterfeiting the bills, he said the latter had "but a poor credit at best and certainly they will yet be worse, in case the practice of counterfeiting prevail."

[1] *Provincial Papers*, vol. ii, p. 733. [2] *Ibid.*, vol. iv, p. 168.

The question of preventing the counterfeiting of bills of credit had already been brought to the attention of the assembly several times. The first counterfeits appeared soon after the bills were put in circulation. The steps, however, which were taken to put a stop to the practice did not produce the result desired. Consequently the laws were made more stringent and severe. Although this acted as a deterrent, counterfeits continued to appear, and in certain years the number in circulation gave cause for alarm and compelled the government to proceed with vigor against the offenders.[1]

In April, 1728, the house of representatives proposed that £30,000 should be issued on loan upon the same basis as the £15,000, emitted in 1717, but the lieutenant governor and council expressed themselves as much surprised at the enormous sum mentioned.[2] However, they said they would take the matter under advisement and suggest a proper sum, but a week afterwards they voted to suspend the consideration of the question until the next session. The following month, the representatives informed the lieutenant governor that they were deeply apprehensive of the consequences resulting from the great scarcity of money and the consequent falling-off in trade, which rendered them incapable of performing many things which might otherwise be done. As a measure of relief, therefore, they proposed that £30,000 should be emitted on loan, but the council was not in favor of such a large issue, for it voted a little later to emit only £5000. This vote the other house promptly non-concurred, at

[1] *Provincial Papers, e. g.*, vol. iii, pp. 751, 797; vol. iv, pp. 13, 107, 117, 133; vol. v, pp. 2, 4, 8; *Laws of New Hampshire, Edition of 1771*, p. 171.

[2] *Provincial Papers*, vol. iv, pp. 289, 490.

the same time sending up another for £15,000.[1] As the assembly was prorogued immediately afterwards, nothing was accomplished, but the different votes show clearly the position which each house held with reference to the further emission of bills of credit.

In 1729, the house passed a vote to postpone the payment of the interest money long since due on the £15,000 loan. In the act, passed in 1717, authorizing the emission of that sum, the interest on the money was to be paid in annual instalments, the rate of interest being fixed at such a figure that it was sufficient at the end of eleven years to redeem the principal and defray the necessary charges connected with the emission of the bills and the loaning out of the money. But so many had defaulted in their payments that the greater part of the money was still unpaid when the time was up. As the province was suffering from a great scarcity of money, an act was passed, providing that the amount still due should be paid in three annual instalments beginning with the year 1729.[2] At the end of the third year, however, there was still owing between £6000 and £7000, and, as before, no attempt was made as required under the law to institute suits against the delinquents for the purpose of selling the land which had been given as security for the money loaned. The governor repeatedly called attention to the matter, for his instructions strictly commanded him to see that all bills were promptly called in as provided in the various acts, but a great many years passed by and additional legislation was necessary before all the money was fully paid.[3]

In the same way, the house kept on postponing the repay-

[1] *Provincial Papers*, vol. iv, pp. 293, 298, 491, 502, *passim*.

[2] *Ibid.*, vol. iv, pp. 550, 624, 688.

[3] *Ibid.*, vol. iv, pp. 624, 659, 668, 720, 824.

ment of the money which had been loaned out in 1714 for a term of two years. As has been already noticed, the assembly extended the time within which the loan might be paid until October, 1718. In addition to the £1500, which was the amount of the first loan, £230 more had been loaned out upon the same basis in the spring of 1716, so that the total amount now out was £1730. When the time came for calling in the loan, the assembly voted to have the bonds renewed with interest, and this policy it continued to pursue whenever the principal became due. When Belcher became governor in 1730, he was commanded to take special care that the provisions of the various acts were punctually complied with. Accordingly, he repeatedly called upon the representatives to enact such measures as were necessary to have the loan called in, and the council, too, was in favor of having this done, but the house failed for many years to take any action in the matter.[1]

With the view of maintaining the credit of the paper bills which had been steadily depreciating in value owing in part to over-issues and in part to the failure of the provincial assemblies to redeem them at such times as were designated in the various acts of emission, the home government at last ordered governors to take special care that all outstanding bills were promptly called in and redeemed as provided in the various acts by virtue of which they had been issued. In other words, the practice of re-issuing the bills and postponing their redemption, contrary to the provisions of the acts of emission, was to cease. Furthermore, governors were commanded to strictly obey the instruction which forbade them to give their assent to any act for the emission of bills of credit (except such as were necessary for the actual support of the government) unless a saving clause was in-

[1] *Provincial Papers*, vol. iv, pp. 341, 563, 643, 685, 689, 717, *passim*.

serted, suspending its execution until his Majesty's pleasure was known. Unlike the instruction issued to Shute, this one limited the amount which could be emitted for the support of the government by stipulating that it should not exceed £6000.[1] When, therefore, the assembly met in the fall of 1730, it provided for the payment of the debts of the province by passing an act for the emission of £1300, and the following December it authorized the emission of £700 more.[2] The same year the house also voted to issue £6000 for the repair of the fort and the erection of a state house. Thereupon, Governor Belcher laid before it the instruction to which reference has just been made. At the same time he told the councillors that, if they thought such an emission would be for the best interests of the province, he would sign the necessary bill, providing it contained the required saving clause, or he would send such a bill home without his signature attached to it and endeavor to secure from the Crown permission to approve it. As the council decided in favor of the emission, a bill, providing for such an issue, was prepared and passed, whereupon the governor wrote home for the necessary permission to sign it. The reply, however, was unfavorable, the Lords of Trade declaring that they could by no means advise the king to sanction the passage of such a measure as it would lower the credit of the province, as a result of which its trade would greatly suffer.[3]

In May, 1731 the house informed the governor that, if those provisions of the various acts of emission, which related to the redemption of the bills of credit, were punctually

[1] *New Hampshire State Papers*, vol. xviii, p. 25.

[2] *Provincial Papers*, vol. iv, pp. 516, 530, 550, 557, 571, 572, 588, 761, 773.

[3] *Ibid.*, vol. iv, pp. 583, 667, 697, 772.

complied with and the bills thus drawn in duly burned as therein stipulated, it would be attended with the greatest difficulty and would lay the people under the most distressing circumstances imaginable.[1] By virtue of these provisions, the province every year up to and including 1742 was saddled with a tax, the proceeds of which were to be devoted to the redemption of the outstanding bills. For this reason and also because money was scarce and trade was failing, the house refused to levy any further taxes upon the people during those years. Instead it proposed to meet the demands of the government by emitting a sum of money, to be redeemed after the year 1742. Furthermore, in order to increase the amount of money in circulation, it passed a vote, providing for the issue of a large sum of bills of credit, to be let out on loan. The first proposition the governor could not approve, because his instructions forbade him to assent to any measure which provided for the redemption of bills of credit after the year 1742. As for the second, the governor said that he could only pass an act for the emission of money on loan, if it contained a saving clause, suspending its execution until the king's pleasure was known. As the representatives refused to insert such a saving clause and declined to pass a supply bill which the governor and council could approve without violating the royal instructions, they were dissolved.[2]

Within the province the demand of the people for more money was making itself more and more keenly felt. Consequently, as the clamor became louder, the pressure brought to bear upon the legislature became correspondingly greater. It is not surprising, therefore, to find that the delegates, chosen by the inhabitants in the assemblies which immedi-

[1] *Provincial Papers*, vol. iv, p. 592.

[2] *Ibid.*, vol. iv, pp. 602, 607, 621, 622, 623, 777.

ately followed the one just dissolved, held substantially the same views as the members of that body. For, not only were they averse to levying any further taxes upon the people on the ground that the latter were already loaded down with as heavy taxes as they were able to pay, but they persisted in their efforts to have the public charges paid in the manner proposed by their immediate predecessors and were insistent in their demands for the emission of a large sum in bills of credit which, in their opinion, was the easiest way of relieving the existing situation.[1] And, when the governor and council could not be prevailed upon to agree to what they proposed and refused to act in violation of the royal instructions, they determined to appeal to the authorities in England for relief.[2] Although Governor Belcher kept them sitting much longer than usual in the hope that they would ultimately yield and although, when such means failed, he ordered a dissolution in the belief that, when a new assembly was summoned, other representatives would be chosen who would work in harmony with himself and the council and act in conformity with the royal instructions, his efforts in these directions did not produce the results desired. In fact, long sessions and frequent dissolutions only served to increase the tension existing between the various branches of the legislature. Moreover, as the relations between them became more and more strained, a feeling of intense bitterness sprang up. In place of the harmony which had been characteristic of the assemblies during the preceding administrations, there was now discord and strife. This is reflected also in the various messages that passed between the different branches of the legislature.

[1] *Provincial Papers*, vol. iv, pp. 634, 635, 640, 641, 643, 646, 650, 654, 656, 657, 662, 799, *passim*.

[2] *Ibid.*, vol. iv, pp. 641, 657, 662, 663, 664, 834, *passim*.

That Governor Belcher realized that something ought to be done to bring relief is evident from his writings. Thus, in a communication sent to the Lords of Trade, requesting their Lordships' approval of a Massachusetts act, providing for the emission of bills of credit upon a foundation of gold and silver he said that, if the act met with their approval, he desired permission to issue bills upon the same basis in New Hampshire also, for the people there were in such distress for something to pass in lieu of money that without speedy help it would be almost impossible for that small province to support any trade at all.[1] Because, however, of the confusion and embarrassment caused in trading circles in consequence of the repeated fluctuations of the circulating medium and the general derangement of money values in the various colonies, the home government determined to remain firm. It therefore refused to yield to the demands which were constantly being made for permission to issue more paper money.

When the lower house realized that there was no further prospect of favorable action being taken, it began to recede from the position which it had so long maintained, and an agreement at last seemed likely when a new question came to the front. This was the question of allowing the province agent in London a sum of money for his services. As the majority of the council were adherents and strict partisans of the governor, it refused to pay one who was doing his best to have Belcher removed from his position as governor of New Hampshire.[2] The house, on the other hand, would not pass the bill then before it, unless that particular item was included. No agreement, therefore, could be

[1] *Provincial Papers*, vol. iv, p. 649. For the colonists' side of the case, see vol. iv, p. 834.

[2] *Ibid.*, vol. iv, pp. 662, 663, 698, 709, 711, 844. For the position taken by the two houses with reference to the agent, see *supra*, pp. 80, 248 *et seq.*

reached. Consequently the governor ordered a dissolution The next year another was summoned but, as the house again insisted upon inserting in the supply bill what had been objected against, a deadlock ensued and another dissolution was the result.[1] The following year writs were issued for the election of another assembly. In March, 1737 the newly elected delegates met in Portsmouth.[2] In his opening address, Governor Belcher told the members that, as more than six years had elapsed since the passage of the last supply bill, the supply of the treasury demanded their first and principal care. "On my part," said he, "I shall be ready to fall in with everything you may lay before me for the public welfare and I wish there may be no contentions this session among the several branches of the legislature, unless it be, which part shall most of all promote the honor of his Majesty's government and the best prosperity of his people under their care." In reply, the representatives assured him that that was exactly what they would strive to do. Soon their actions bore testimony to the truth of their assurances. A conciliatory spirit pervaded all parts of the legislature. In order to provide for the payment of the province charges, a bill was passed to issue £6500. Although £500 for the agent was included in this amount, still it was expressly stipulated that it should go towards reimbursing him only for the time and money he had expended in the affair of the province lines, which was a matter of prime importance to all the inhabitants of the province. Furthermore, £500 more was to be used towards defraying the expense which the royal commissioners would incur in marking out the boundary line. As a fund for drawing in the bills, it was provided that a tax of £4000 should be levied and paid into

[1] *Provincial Papers*, vol. iv, pp. 700, 705, 711, 712, *passim*.

[2] *Ibid.*, vol. iv, pp. 716, 722.

the treasury by December 31st, 1741, and a tax for the balance levied and paid by the last day of the following year. After this bill had received the governor's approval, the house proposed that £3000 more should be struck off for the purpose of exchanging former bills of credit which were either broken or defaced or otherwise rendered useless —the old bills so redeemed to be burnt to ashes. After the governor and council had signified their approval, the house suggested that, inasmuch as it would cost but little more to strike off an additional £500, that sum should also be printed and lodged in the treasury unsigned until further order of the general assembly. As the governor and council approved the suggestion, the £500 was impressed. After the lines had been run, the house sent up a vote to have the £500 signed and used to defray some of the charges incident thereto but the council would not agree to it. Also, when the representatives wished to emit £1000 to enable the province to appeal from the decision of the commissioners, the council refused to concur, although it was provided that the bills should be redeemed in 1738 and 1739.[1] In November, 1738, the assembly was dissolved before the treasurer's accounts had been adjusted so that no supply bill for that year was passed.[2] In February, 1740, Governor Belcher informed the two houses that, inasmuch as war had been declared against Spain, it ought to be their first care to have the public treasury well supplied, so that the frontiers by sea and land might be put in a posture of defence. At the same time, he pressed them to make proper provision for the discharge of the province debts and for the further support of the government. In reply, the representatives promised to do whatever they could in the premises but, as no

[1] *Provincial Papers*, vol. iv, pp. 732, 733, 734, 748, 749, 750, 752, 756, 822, 829, 832, *passim*.

[2] *Ibid.*, vol. v, pp. 9, 18, 59, 165, 167.

supply bill had been passed since 1737, they were afraid that, if they now made that ample supply which the governor recommended and emitted such a quantity of bills as was necessary for the purposes named, it would be an insupportable burden to the people and would bring upon them a greater or more certain misery than that which they pretended to remedy, unless the period for the redemption of the bills extended beyond 1742, the time limit designated in the instructions.[1] They then referred to what previous assemblies had done with respect to repairing the fort and declared that whenever the latter had refused to levy taxes upon the people because of the restrictions placed upon the issue of paper bills, they had "acted agreeable to the sentiments of their constituents."[2] As they made no attempt, however, to raise any money, the governor again urged them to take some action in order that the fort, which was in a miserably poor condition and almost destitute of every thing requisite for its defence, might be repaired and supplied with men, powder and the necessary stores of war. But, the most they would do was to vote a sum, which, under the circumstances, was entirely inadequate. As for making any provision for the payment of the public debts and for the future support of the government, they did nothing. A vote, however, was passed for the appointment of a joint committee to address the king for the purpose not only of securing an extension of the time within which all the present bills of credit had to be redeemed, but also of obtaining permission to emit such a further sum as the necessity of the province required. And, in order to insure the dispatch of such an address, it was stipulated that, if the council failed to give their concurrence to the vote, the committee, named by the house, should prepare and forward

[1] *Provincial Papers*, vol. v, pp. 11, 18. [2] *Ibid.*, vol. v, p. 19.

one. Realizing that the representatives did not intend to raise such sums as were required, Governor Belcher resolved to put an end to the assembly. Accordingly, he sent down a message, in which he said that, although they had already spun the session out to the length of two ordinary ones, no effectual steps had been taken to put the frontiers by sea and land in a posture of defence nor had they as much as attempted to discharge the just debts of the province or make any provision for the future support of the government. Under the circumstances, therefore, he deemed it his duty both to the king and to the people to order a dissolution.[1]

The following summer, a new assembly was called to make the necessary arrangements for the expedition which the English government had projected against the Spanish possessions in the West Indies.[2] From the answer made by the house to the governor's speech, it is evident that the relations between the governor and that branch of the legislature were not harmonious. Consequently, after they had passed a bill for the emission of £2700, the governor dissolved them. In February, 1741, another assembly was summoned. In his first address to the delegates, the governor informed them that he had received two additional instructions, one respecting bills of credit and one respecting the execution of his Majesty's final determination of the boundary lines. With regard to the latter, he earnestly recommended that provision be promptly made to defray the charges necessary to carry the king's orders into execution.[3]

[1] *Provincial Papers*, vol. v, p. 67.

[2] *Ibid.*, vol. v, pp. 30, 68, 69, 72. July, 1740; *New Hampshire State Papers*, vol. xviii, p. 103.

[3] *Ibid.*, vol. xviii, pp. 113, 115, 117; *Provincial Papers*, vol. v, pp. 28, 595. Both provinces had appealed from the decision of the boundary line commissioners and the king finally decided the matter in favor of New Hampshire.

He then referred to the ruinous condition of the fort and to the necessity of putting it in a good state of defence and asked them also to consider the state of the treasury. The instruction concerning the bills of credit, which he laid before them, simply strengthened and reinforced the previous instruction on that subject, in that it commanded the governor to observe "punctually and effectually," upon pain of his Majesty's highest displeasure and of removal from office, the instruction which forbade him to assent to the emission of any more bills of credit unless the required saving clause was inserted in the act. In commenting upon this[1] the representatives said that they regretted that the governor was under such restrictions and wished the king had been fully informed of their circumstances and knew how difficult and almost impossible it was for them to do what was necessary for the defence of the province without the immediate emission of such bills. Though conscious that the only fort in the province was in a ruinous condition, they declared they were at a loss to know how to prevent it, inasmuch as their paper currency could not be extended beyond the year 1742. However, they were willing to do all they could in their present condition. For the purpose, therefore, of putting the fort in some sort of defence, they agreed to appropriate £500 towards its repair and £400 more to supply it with powder. As for the boundary lines, they were of the opinion that it was the business of the Massachusetts government to have the royal orders relating to that affair carried into execution at their own cost, but as the people of New Hampshire were particularly anxious to have the work done at once, they voted a supply of £500 for that service. Deeming this insufficient for the end in view, the governor pressed them to raise an additional sum. This,

[1] *Provincial Papers*, vol. v, p. 76.

however, the representatives refused to do. For this reason and also because they had made no attempt to provide for the payment of the province debts or for the support of the government, the governor dissolved them.[1] Before another assembly met, Belcher was removed from both his governments, being superseded in Massachusetts by William Shirley and in New Hampshire by Benning Wentworth.

Now a word as to the import, excise and tonnage duties. As has been already noticed, the province, up to the year 1711, had always derived a revenue from the import, excise and tonnage duties, which had been first imposed by a temporary act of the legislature in 1692 and regularly revived with some slight alterations from year to year for almost two decades. In 1711, the assembly continued, as usual, the excise and tonnage duties but did not revive the import duties.[2] In recommending the re-establishment of the impost act the following spring Governor Dudley remarked that its abatement must have been a surprise to the authorities in England, as every nation imposed a duty on shipping and trade for the support of the government, in order to ease the

[1] *Provincial Papers*, vol. v, pp. 30, 75, 76, 79, 81, 86 *passim; New Hampshire State Papers*, vol. xviii, p. 123. The day before the dissolution, the governor sent a message to the representatives in which he said that he had been "so great and so long a sufferer by the continued depreciation of the public bills of credit" that he was obliged to apply to them for relief. According to him, the loss in salary which he had sustained the first two years in consequence of the sinking credit of the paper currency was £100 a year; the third year the depreciation amounted to £140, and the following year it rose to £200, while since that time it had equaled £450 a year. These figures are interesting in that they show how great the depreciation of the paper money was. Although the act settling the salary stipulated that he should receive £600 in bills of credit or £200 sterling, the assembly refused to allow him anything for the depreciation on the ground that nothing was said in the vote settling the salary, respecting either the rise or fall of money. See *Provincial Papers*, vol. v, pp. 84, 85.

[2] *Ibid.*, vol. iii, p. 505; *New Hampshire State Papers*, vol. xix, p. 26.

land tax which was always heavy upon the country. The house,[1] however, voted as before in favor of a free port, whereupon the council took leave to represent to the governor its willingness to come into any act for the establishment of a just import duty upon the trade of the province as had been the custom of the province in the past and was now the practice in all the other colonies. In the fall, the governor again pressed them to establish a duty, but the representatives again voted in favor of a free port.[2] The following July, Dudley again recommended the revival of the duty, saying that "there is no colony or government belonging to the crown of Great Britain that pretends to an open port or that does not bring in the trade and merchandize of their province to aid the land tax for the payment of the heavy charges of the war, which is as needful in this province as in any other of her Majesty's governments, the neglect and inequality whereof will, I fear, justly offend her Majesty as well as disturb the other governments on the shore of America." But the representatives again refused to establish an import duty, though voting as usual to continue the other duties.[3] In May, 1714, the governor again recommended a duty and at the same time pressed them to farm out the excise or otherwise dispose of it so that it might be of some service to the province. In addition to continuing the other duties as was usual, the assembly now passed an act, levying import duties on rum, wine, sugar, molasses and tobacco, and an export duty on lumber. As Massachusetts took offence at the last-named duty, the assembly promptly notified the collector to stop collecting it, and, when the act was

[1] *Provincial Papers*, vol. iii, pp. 511, 518; *New Hampshire State Papers*, vol. xix, p. 31.

[2] *Ibid.*, vol. xix, p. 38. October, 1712; *Provincial Papers*, vol. iii, p. 540.

[3] *Ibid.*, vol. iii, pp. 540, 552; *New Hampshire State Papers*, vol. xix, p. 44.

revived the next summer for another year, it voted to repeal that section of the act. At the same time the excise was ordered to be farmed out by the treasurer, assisted by a committee of the two houses.[1]

In May, 1716, the house refused to pass any impost act but voted as usual to continue the excise duties for another year. In consequence of this Lieutenant Governor Vaughan dissolved the assembly. When another was called in August he told the members that the occasion of dissolving the last assembly was very distasteful to him but it was his particular duty not to suffer the revenues of the crown to be lessened. He therefore urged them to adopt an import duty. In reply, however, the representatives expressed themselves in favor of having the expenses of the government defrayed by a tax on the polls and estates.[2]

Soon after Governor Shute entered upon the government, the house voted to impose import duties on liquors and on European goods but the council refused to concur unless an export duty was laid on lumber.[3] In 1718, the governor pressed the representatives to levy a duty, but the latlater in reply said that they thought the charges of the government were more easily defrayed by a tax upon the polls and estates and that it was greatly in the interest of the people to have a free port. Accordingly no impost act was passed, but as usual the excise was continued another year and a committee of the two houses was appointed to farm it out.[4]

In July, 1721, an act was passed levying import and ex-

[1] *Provincial Papers*, vol. iii, pp. 554, 571, 581, 587.

[2] *Ibid.*, vol. iii, pp. 644, 645, 649, 651; *New Hampshire State Papers*, vol. xix, p. 91.

[3] *Provincial Papers*, vol. iii, pp. 662, 663, 665, 678. January, 1717.

[4] *Ibid.*, vol. iii, pp. 686, 725.

cise duties on wines and liquors and an export duty on boards and on merchantable fish sent to the other colonies. As the General Court of Massachusetts considered some of the provisions of this act injurious to that colony, it passed an act imposing severe and uncommon duties on provisions and all kinds of wares and merchandise coming from or destined for New Hampshire. As the execution of the latter act would prove very detrimental to the interests of the smaller province, the New Hampshire assembly in September voted to repeal their act in so far as the import duties on liquor and the export duties on lumber were concerned, provided the General Court of Massachusetts at its next session repealed its act and several other acts which were particularly injurious to the trade and shipping of New Hampshire.[1] In December, the assembly further postponed the execution of the act in so far as it concerned Massachusetts until the following March in the hope that the latter government would repeal the oppressive duties complained of. The following May,[2] the operation of the act was further suspended until Massachusetts put in force the act which was aimed against New Hampshire. As the import and export duties were now dropped, the only indirect revenue was obtained from the excise duties. The latter continued to be collected with some alterations and additions, throughout the provincial period. Instead, however, of being revived for only one year as was usually the custom in the past, they were generally enforced, from this time on, by terms of years.[3] In like manner, the excise was usually farmed out to the highest bidder by a committee of the two houses, sometimes for one year and sometimes for a num-

[1] *Provincial Papers*, vol. iii, pp. 819, 827, 837; *New Hampshire State Papers*, vol. xix, p. 159.

[2] *Provincial Papers*, vol. iii, p. 837; vol. iv, p. 28.

[3] *Ibid.*, vol. iv, pp. 120, 368, 410, 619, *passim*.

ber of years.[1] In 1752, the house proposed that the province should be divided into a certain number of excise districts, for each of which there should be a collector who was to be under bond to the speaker of the house, but, as the governor did not favor the scheme, the vote was not approved.[2] In 1761, the governor refused to assent to the excise bill proposed by the house, on the ground that it deprived him of the power of appointing the persons who were to farm it out, thus infringing upon the power which the Crown possessed of appointing all officers of the royal revenues. After the accession of the last royal governor in 1767, the excise was regularly farmed out for periods of one year by a joint committee of the two houses to receivers who were appointed by them but commissioned by the governor to make a faithful collection of the same.[3]

In January, 1742, the first assembly that met under Governor Benning Wentworth convened in Portsmouth.[4] In his first speech to the assembled delegates, the new governor referred to the complete separation of the two governments as an event which, if rightly improved, would be a lasting advantage to the province and a means both of replenishing their towns with people and of extending and enlarging their commerce. Furthermore, he told them that he regarded the king's determination of the tedious boundary dispute, "which had subsisted in one shape or another upwards of

[1] *Provincial Papers*, vol. iv, pp. 184, 548, 619, 691, *passim*.

[2] *Ibid.*, vol. vi, p. 140.

[3] *Ibid.*, vol. vii, pp. 139, 247, 263. The governor commissioned the receivers so as to avoid in appearance the infringement of the prerogative. The excise was sold in three divisions. In 1770, the excise brought £630; in 1772, it brought £934; back in 1730, it brought £396. *Ibid.*, vol. vii, pp. 261, 303, 533.

[4] *Ibid.*, vol. v, pp. 135, 136. Wentworth entered upon the government in December, 1741.

three score years," as the highest instance of that paternal care which his Majesty always extended to his subjects "though ever so remotely placed." Moreover, he declared that, in consequence of their dutiful behavior to the king, they were now beginning to reap the fruits of their past obedience. He then expressed himself as highly pleased "that the public faith had been so religiously kept in regard to the emissions of paper money and that agreeable to the several periods provided for by acts of government all former emissions will be complied with in the year 1742;" and "this," he went on to say, "is a fortunate circumstance in favor of the province, more particularly as the state of the paper currency in all the plantations is now under a parliamentary consideration." Pursuant to the king's commands, he then recommended that provision be made for the support of the government and that a suitable salary be settled on him in sterling or proclamation money, that there might be no variation or depreciation in the value of the sum allowed. And that they might be the better able to comply with their obligations to the Crown, he said that he had the king's permission to consent to a further emission of paper bills, provided it could be effected without prejudice to British trade. He then asked them to provide for the supply of the fort and for the discharge of the province debts, and also called upon them to reward their agent in England and reimburse those who had expended considerable sums in the past in defending the province against the claims of Massachusetts.[1]

[1] *Provincial Papers*, vol. v, pp. 32, 45, 136, 137, 140. While the parliamentary investigation was under way, Secretary Waldron, probably in reply to inquiries from the English government, certified that between the years 1709 and 1737 inclusive there had been emitted in bills of credit £56,384, all of which had been drawn in, redeemed and burnt except £10,576 : 16, which was to be paid by taxes upon the polls and

After heartily concurring in the sentiments expressed by the governor with reference to the present manifestations of his Majesty's royal favor, the representatives declared that the appointment from among the inhabitants of a person as governor "who stands in a kind of natural relation to them, whose interest is blended with theirs and who is prompted by many motives besides natural inclination to promote their welfare," called for their particular acknowledgments. As for settling a salary upon the executive and providing for the other matters recommended, they would consider all those questions very carefully and do all that it was in their power to do concerning them.[1]

After learning that the governor could emit £6000 in bills of credit for the support of the government, the question of the value which such bills should bear to other money was debated in the house. As a result of the discussion, it was decided that they should be made in value equal to a specified amount of silver. Hitherto, bills of credit had been made "in value equal to money." According to the standard now agreed upon, every bill of 6s. 8d. was to be regarded as equal in value to one ounce troy weight of coined silver of sterling alloy. Furthermore, it was agreed that one of the new bills should be equivalent to four of those heretofore issued.[2] The latter then came to be known as old tenor bills, while the former were called new tenor bills and were equal in value to what was known as proclamation money. In emitting such bills, New Hampshire but fol-

estates in 1741 and 1742, and about £2000 of the £15,000 loan. Add to the £56,384 the bills which had been emitted since 1737 and the total amount issued up to Benning Wentworth's arrival would be around £60,000. He also said that £75 New Hampshire currency was equal to £14 sterling.

[1] *Provincial Papers*, vol. v, p. 138.

[2] *Ibid.*, vol. v, pp. 142, 145, 154, 157, 162, 176, 531, 619, 621.

lowed in the wake of Massachusetts, which had commenced the issue of the new tenor bills some time before this.

Although the sum required to discharge the province debts and provide for the immediate supply of the treasury amounted to but £4,720, the house desired to emit at once the entire sum allowed in the instructions, stipulating that the £1,280, which was not then needed, should be put into the treasury and left unsigned until disposed of as the general assembly should order. As the governor, however, refused to consent to the issue of any more money than was actually needed for the purposes mentioned, only £4720 was emitted.[1] As was the case with the previous bills, the new bills were to be redeemed by levying taxes upon the polls and estates. According to the provisions of the act of emission, these taxes were to be collected in instalments beginning with the year 1744 and ending with the year 1749 and could be paid "in commodities of the produce or manufactures of this province."[2]

Later, when the act was being considered by the Board of Trade, objection was made to this clause on the ground that the payment of the taxes for the redemption of the bills in such commodities might cause an annual deficiency. As the sum emitted, however, did not amount to that allowed in the instructions for the current service of the province and as provision was made in the act for making good

[1] *Provincial Papers*, vol. v, pp. 159, 615, 619, 629; *New Hampshire State Papers*, vol. xviii, p. 146.

[2] *Provincial Papers*, vol. v, pp. 213, 622, 684. These commodities or species designated in the act were silver, gold, hemp, flax, cod fish, merchantable bar iron, Indian corn, rye, wheat, barley, peas, pork, beef, merchantable white-pine boards, beeswax, bayberry wax, tallow and tanned sole leather. These commodities were to be rated each year by the general assembly. In later acts of emission it was provided that the bills then issued might be redeemed in the same way.

any deficiency, the Board concluded to recommend that the bill be approved. Accordingly, the king signed it.[1]

In order to support the credit of the new bills and ensure their circulation at the value decided upon, an act was passed,[2] imposing a severe penalty upon any who should willingly give, contract or offer to give or receive more than six shillings and eight pence in said bills for one ounce of coined silver of sterling alloy. At the same time, however, the general assembly reserved to itself the right to settle the value of the bills once a year.

As the money, authorized for the supply of the treasury, would be " utterly insufficient " to repair the fort, build block houses and do sundry other things that were absolutely necessary for the present defence of the government, the representatives proposed to emit a large sum on loan. Furthermore, they said that if such a sum was emitted they would be able to grant the governor a more honorable support than their present circumstances would permit. According to the act [3] which was then drawn up, the amount to be emitted was £25,000 in new tenor bills, all of which was to be let out for a term of ten years at 6% to the various towns in proportion to the amount which each paid into the treasury towards defraying the province charges. Furthermore, it was provided that the principal should be called in at different periods, the last ending in 1752, and that land should be given as security for the money received by the borrowers. As for the interest arising from the loan it was stipulated that it should be used to pay part of the governor's salary, to repair and erect forts, to build a state

[1] *New Hampshire State Papers*, vol. xviii, p. 146; *Provincial Papers*, vol. v, p. 654.

[2] *Ibid.*, vol. v, pp. 531, 620.

[3] *Ibid.*, vol. v, p. 152; *New Hampshire State Papers*, vol. xviii, p. 147.

house, to cut roads, to establish a light-house, to repair the prison and to provide for other public charges.

After considerable discussion, the house agreed to give the governor a salary of £500 a year in proclamation money or in bills of credit equivalent thereto—the money to be obtained in equal portions from two funds.[1] That which came out of the excise was to be paid annually during the entire time of his administration, while that which came from the interest, derived from the emission of the money on loan, was to be paid annually only as long as the act continued in force. In addition to this,[2] the governor received out of the money that was formerly emitted for the expedition against the Spaniards in the West Indies £500 (the equivalent of £125 new tenor) as a present to help defray the charge he had been at in coming to the government, while, to induce him the more readily to assent to the acts settling his salary, the assembly provided that, if he approved the acts in question, he should be presented with £125 new tenor. Furthermore, the equivalent of £25 new tenor was given him for a year's house rent. As for the colony's agent in England,[3] he received the thanks of the government "for the unwearied pains and difficulty" to which he had subjected himself in prosecuting and defending their cause at the various boards in Great Britain and £100 sterling with the promise of a more ample reward when the province was in a position to pay it.

Some time after the session closed, Wentworth sent a letter to the Board of Trade[4] in which he said that, as the

[1] *Provincial Papers*, vol. v, pp. 153, 160; *New Hampshire State Papers*, vol. xviii, p. 141.

[2] *Provincial Papers*, vol. v, pp. 143, 623.

[3] *Ibid.*, vol. v, p. 625.

[4] *New Hampshire State Papers*, vol. xviii, p. 140.

bill for the emission of £25,000 on loan was of an extraordinary nature, he had assented to it with a saving clause, deferring its execution until the king had signified his approbation of the measure. "What I have to offer to your Lordships on the act," he went on to say, "is that the money is put on a more certain footing in respect to its fluctuating than any former emissions and that no merchant trading to this province from Great Britain can in any shape be prejudiced, should it fall in value, which I don't conceive will ever be the case." As the province was in a very naked and defenceless condition and hardly had the appearance of a king's government, "being destitute of a house for the general assembly or for the governor," at least £20,000 provincial currency would, he declared, be required to put it in a proper state of defence, build such block houses as were requisite for the defence of the infant settlements and cut such roads to and from the frontiers as were absolutely necessary. But it would be impossible, he said, to raise such an amount on the polls and estates, which was the only method they had of raising public money, and though the people are ready and willing to grant a handsome support to the king's governor, yet considering the present debts, they are not able to do so. For these reasons, he hoped the Board would "be moved compassionately to consider the case of the province in their present situation and give countenance to this act in such manner as in your Lordship's wisdom may seem most for his Majesty's honor and the welfare of this province," for on this act, he assured them, depended in great measure the future prosperity of the country.

After taking the act under consideration, their Lordships came to the conclusion [1] that they could not lay the same be-

[1] *New Hampshire State Papers*, vol. xviii, p. 147. February, 1743.

fore the king for approval, because it would create a paper currency much more extensive than was allowed in the royal instructions. Nothwithstanding this, however, they thought themselves obliged to say that the principal merchants trading to the province were of the opinion that the sum of £25,000 would be no more than what was absolutely necessary to carry on the trade and business of the colony and would be the best means of preventing the base paper currency of the other provinces from becoming the medium of trade in New Hampshire. Moreover, they did not think that the distant periods fixed for calling in the bills, or any other matters contained in the act, could be prejudicial to their interests, inasmuch as another act for ascertaining the value of money and bills of credit would remove the evil, which had hitherto arisen from the use of New England paper currency, in that it secured to creditors the true value of their just debts. Furthermore, they thought that the speedy emission of such a sum was absolutely necessary not only for the entire trade and commerce of the province but also for the security of the country and the valuable ships constantly trading there for masts, yards and bowsprits for the royal navy.

Although somewhat discouraged, the agent for the province in England still hoped the bill would not miscarry and immediately bent all his energy to secure the royal approbation of the measure. In this he was successful, for four months later the act was approved by the king.[1] As the general assembly had already appointed a committee of the two houses to act as trustees in managing the money from the loan, the latter now proceeded to let it out, and from a memorandum filed by the chairman of the committee, it ap-

[1] *New Hampshire State Papers*, vol. xviii, p. 148; *Provincial Papers*, vol. v, p. 654.

pears that the money was distributed among 427 persons in sums varying from £25 to £200.[1]

In 1743, Massachusetts proposed that all the New England governments should appoint commissioners to consider the means necessary to prevent any further depreciation of the bills of credit and to agree upon some joint action for doing away with them entirely. As the other governments, however, failed to appoint commissioners, nothing was done.[2]

Late the following spring, word was received that England had declared war against France. This necessitated the summoning of the legislature in special session, for, although the rupture between the two countries had been expected for some time past and the home government had even issued orders, directing that the country should be put in a posture of defence, still no effectual steps had been taken to secure the province from attack.[3] As it was probable that the Indians would begin hostilities along the frontier at any moment, the need of immediate action was apparent. Accordingly, to meet the situation,[4] 200 men were ordered raised immediately to cover the frontier and, in case the governor should declare war against the Indians, it was provided that a reward of £50 should be offered for every Indian captured and for every scalp brought in by such volunteers as were specially commissioned by the exe-

[1] *New Hampshire State Papers*, vol. xviii, p. 190; *Provincial Papers*, vol. v, p. 160.

[2] Felt, *Massachusetts Currency*, p. 115; *Provincial Papers*, vol. v, pp. 209, 670, 672, *passim*. During the fourth session of the assembly which ended Sept. 28, 1743, two small supply bills were passed, one for £300 and one for £980.

[3] *Provincial Papers*, vol. v, pp. 96, 265, 709, 710. May, 1744. King George's War.

[4] *Ibid.*, vol. v, pp. 711, 712.

cutive to seek out the enemy. At the next regular session, the governor called upon the representatives to provide the necessary funds and to make such preparations as would enable him to prosecute the war with vigor. At the same time, he declared it would be of the greatest importance during the war to have a fund lodged in the treasury to provide for such emergencies as might arise during the recess of the legislature. To meet the many demands which the war would make upon the treasury, the house proposed that more money should be emitted, but to this the governor would not agree, for his instructions were against it. Thereupon a committee of the two houses was appointed to convince him of the necessity of emitting more money for the actual defence of the province. Furthermore, the members of the committee were commanded to estimate the sum which would be required to meet all demands for the next six months. According to the report they presented, £10,000 at least was necessary to carry on the war and repair the fortifications. In addition to this, the ordinary charges of the government had to be met. As there was no money in the treasury, they said they could see no way to support the honor or the very being of the province, unless the governor could be prevailed upon to grant an emission of paper bills sufficient simply for the necessary and unforeseen extraordinary expenses. As for the instruction forbidding the emission of paper money, they conceived that was calculated for the good of the province in time of peace. For, to give it no greater latitude in construction in time of war than barely the letter, must unavoidably prove the utter ruin of the province, which they were sure could never be the king's intentions. Thereupon, the representatives informed the governor [1] that, if no money could be emitted, they would

[1] *Provincial Papers*, vol. v, pp. 236, 238, 241, 713, *passim*.

not be able to maintain the frontiers, but must call in the same and put themselves in as good a posture of defence as their circumstances would allow. The following day Wentworth sent down a message stating that he was ready to assent to a further emission of paper money, sufficient to answer the present extraordinary emergency, provided they made "an actual undeniable fund for drawing in the same," and the amount did not exceed £10,000. Thereupon the house proposed that £7500 should be drawn in by a tax on the polls and estates and £2500 should be redeemed out of the interest arising from the £25,000 loan. The proposal, however, to use a revenue of the government as a fund for the redemption of the bills, the governor declared [1] he could not assent to. Furthermore, he told the house that, inasmuch as the emission of the bills would be a direct violation of his instructions, he expected, before giving his assent to the act, that the two houses would join in appointing a committee, both to inform their agent in England of the necessity he had been under in acting in violation of the royal orders and to instruct him to use his best offices to "take off or prevent any censure" that he, the governor, might be subjected to. Moreover, as the demands of the war would necessitate from time to time the emission of further sums of paper bills, he thought the committee should also direct the agent to apply at the proper offices with the view of obtaining leave for the issue of such further sums as might be found necessary during the continuance of the war, for unless such license was obtained, he assured them, he would not be able to help them in the future, however urgent the necessity might be. Thereupon a committee of the house was appointed to confer with the governor upon the reasonableness and sufficiency of the fund which had been

[1] *Provincial Papers*, vol. v, p. 242.

suggested, and a message was drawn up in which they argued that such a fund was a real and substantial one, fully sufficient to answer to all intents and purposes the end proposed. Furthermore, they declared that, as it was their business to avoid bringing insuperable burdens upon their constituents, it was nothing but a sense of duty in that regard which prevented them from fully concurring with him in the point under debate. As for what had been urged respecting the violation of the instruction, they were of the opinion that his excellency could not possibly incur the royal displeasure through waving it at the present time. In fact, they believed he would be acting in conformity to what his Majesty had already approved. "But," they continued, "if there was any danger in the case to your excellency, there is no doubt but the house and their successors will be always ready to pursue all necessary measures for the safety and interest of a government that should risk anything for the good of the people they represent." For these reasons, therefore, they were determined to adhere firmly to the propositions already made.[1] As the governor could not see the matter in that light, the bill failed to pass. A vote, however, which had passed the assembly some time before, granting £5500 for the purposes of the war, his excellency assented to upon condition that the act, providing for the emission of the money, contained a saving clause suspending its execution until the king's pleasure was known. As the assembly, however, was averse to passing the act with a saving clause attached to it, and Governor Shirley of Massachusetts strongly advised the governor not to approve it in any other form, the matter was dropped.[2] In order to provide for the payment of the ordinary debts of the province, an act

[1] *Provincial Papers*, vol. v, pp. 243, 245.

[2] *Ibid.*, vol. v, p. 252; *New Hampshire State Papers*, vol. xviii, p. 211.

was passed, levying a tax of £1000 upon the polls and estates, and as money was needed immediately for the repair of the fort, £450 was borrowed from sundry persons and an act passed providing for the repayment of the same out of the interest arising from the £25,000 loan.[1] An act for granting his Majesty £786: 13: 4 was also approved by the governor.

With the view of clearing the way for the future, the governor in October sent the representatives a message, recommending that they address the king for men or for permission to emit more bills of credit or for both these things, as they judged proper.[2] But it does not appear from the records that they took any action in the matter, notwithstanding the fact that his excellency pressed them to proceed upon what he had recommended without taking any other question under consideration.

In January, 1745,[3] the operation of the triennial act forced the governor to dissolve the assembly. Consequently another had to be called to make the necessary preparations for the ensuing year. In his first speech to the new members, Wentworth said that as it was more immediately their province to take such action as would enable him effectually to carry into execution the royal commands for the defence of the country, he expected they would proceed without the least delay, for the province was "naked and almost defenceless" and the season was approaching when an attack might be expected both by land and sea. At the same time, he laid before them several papers of importance, among which was the report of the General Court of Massachusetts relating to an expedition against Louisburg and a letter from Governor Shirley pertaining to the same enter-

[1] *Provincial Papers*, vol. v, pp. 245, 249, 720, 729, 730.

[2] *Ibid.*, vol. v, p. 724.

[3] *Ibid.*, vol. v, p. 728.

prise. In reply, the representatives assured his excellency that it was their intention "to give all the dispatch in their power to the public affairs without suffering any private business to give the least interruption thereto, and to proceed first upon those matters that are of the greatest importance."[1] Accordingly a committee was appointed to join a committee of the other house for the purpose of considering the question of taking part in the proposed expedition. After considering the project, the joint committee reported that it was incumbent upon the province to do everything possible to forward and encourage the undertaking. They, therefore, proposed that 250 volunteers should be raised, provided some method could be devised to defray the charge, which they estimated would be £4000. The report being approved by the house, the latter passed a vote to emit £10,000—to be used not only to defray the cost of the expedition but to provide for the defence of the province and for the support of the government. And, as a fund for the redemption of the bills, they proposed that a tax should be levied upon the inhabitants in ten equal instalments, beginning with the year 1756. To this vote the councillors made two objections. In the first place, they said that the vote should contain nothing but what would make it appear that the money was emitted for the purpose of carrying into execution the expedition against Louisburg. In the second place, they thought that the time for calling in the bills should commence with the year 1751. In answer to these objections, the representatives said, that as it would be dishonorable in them to pass any vote or bill but one that plainly showed on its face what they intended, they could not consent to the emission of the money unless the uses to which it was to be put were clearly expressed.

[1] *Provincial Papers*, vol. v, pp. 265, 266, 268.

Furthermore, they could not agree to have the period for drawing in the bills begin in 1751, because it would put upon the people an insupportable burden. Thereupon, the governor observed that as he had no instruction to support him in assenting to the emission of any more money, he would "necessarily incur his Majesty's highest displeasure, if the support of the government or any other affair should be included or even presumed in the said bill." The following day, the members of the lower house sent the governor a message, in which they said that, for all the council and his excellency proposed for the defence of the province, the latter would remain in the same naked and defenceless state as it was then in. "Does your excellency think," they continued, "it would be for the honor of his Majesty and the safety of his people in this province to leave the province in such a naked and defenceless state as your excellency is pleased to represent it in, and at a season when your excellency justly observes we may expect to be attacked by land and sea, to send 250 of our best men (when we can barely spare them) on an expedition abroad and make no manner of provision for the defence of his Majesty's government at home? The house are surprised thereat and think this would be a high breach of the trust reposed in them and a great dishonor to his Majesty, to leave his province in so naked and defenceless a state, and really think it is a sure way to gain his Majesty's displeasure," especially as the royal orders so strongly require that it be put in the best posture of defence. They, therefore, hoped that on further consideration he would see fit to give his assent to their vote. Immediately afterwards, the council amended the vote by providing that nothing should be said in it except that the money was intended for the service of the expedition, for annoying and distressing his Majesty's enemies and for defending and safeguarding the inhabitants. Furthermore,

that body stipulated that the periods for bringing in the money should commence in 1751. With these conditions, the governor also declared himself satisfied. Finally the house gave way and agreed to accept the conditions imposed by the governor and council.[1] But, now, the governor hesitated. Although the desire to give life to the expedition would, he said,[2] lead him to overlook small difficulties, the violence he had to offer to his instructions, the uncertainty whether the grant of 250 men would take effect unless the number was increased to a small regiment under field officers of their own, and the distant periods set for the redemption of the bills, made the difficulties so great that he wished them to increase the number of men to a small regiment and shorten the periods or else give in their reasons for not doing so. Furthermore, he desired to know whether they could not find any other way of defraying the necessary charges. In reply,[3] the representatives said the amended vote conformed exactly to the conditions which he assured them he would consent to. As for the additional number of men suggested, they declared that provision might have been made for them, had the matter been proposed earlier but, inasmuch as so much time had been spent in bringing the present vote forward and the actual preparations for the expedition would only be delayed by making any alterations now, they prayed him to assent to the vote as it stood, after which another could be prepared for an increase in the number of volunteers. Moreover, as the inhabitants were in very distressed circumstances in consequence of the war, and the taxes were exceedingly heavy, they knew of no other way to raise money for the expedition and could not, under the circumstances, shorten the periods for bringing in the

[1] *Provincial Papers*, vol. v, pp. 269, 276, 278, 279, 281, 282, 286.
[2] *Ibid.*, vol. v, p. 288. [3] *Ibid.*, vol. v, p. 289.

bills. Upon desiring to know the number of men whom the representatives proposed to raise and the manner in which they were to be provided for,[1] the governor was informed that the house thought of raising between four and five hundred men in all and intended to provide for the additional charge thus incurred by emitting a further sum in bills of credit. Being requested to send up a resolve on the subject the house appointed a committee to tell the governor that, if he would consent to put off the period for the redemption of the bills until after 1760, they would vote two hundred volunteers more than had already been granted, but, if he would not consent to that, they were resolved to grant but one hundred more. As the governor refused to postpone the repayment of the bills to so distant a period,[2] only one hundred additional volunteers were raised while, to defray the additional charge thereby incurred, a vote was passed for the emission of £3000. Although Governor Shirley had expressed the opinion [3] that the governor would not run any risk of being censured at home by assenting to the emission of bills of credit to be used for the service of the expedition, still Governor Wentworth hesitated. And, before giving his assent to the vote for the emission of £10,000,[4] he asked the council whether they would advise him to approve it, in view of the fact that his instructions were against it. After some debate, the latter resolved unanimously in favor of the governor approving the vote. Accordingly, it was approved and immediately afterwards the one for emitting £3000 was also assented to. Thus, the sum of £13,000 in bills of credit was secured for the purposes of the war.[5]

As it was necessary to keep the troops in service longer

[1] *Provincial Papers*, vol. v, pp. 290, 740. [2] *Ibid.*, vol. v, p. 291.
[3] *Ibid.*, vol. v, p. 933. [4] *Ibid.*, vol. v, p. 739.
[5] *Ibid.*, vol. v, pp. 291, 296, 740, 742.

than was at first anticipated and an augmentation of the force was required, the two houses in June agreed to raise another hundred men and resolved to emit £6000 to meet the additional expense incurred. As the governor regarded the reduction of the French stronghold as a matter of the greatest importance to the Crown, he assented to the bill in full confidence that the house would join the council in desiring the agent to implore the king, in case any censure or aspersion should be cast upon his conduct, to excuse it, and make it appear that it was the earnest desire of the house upon so extraordinary an emergency. A vote to that effect was accordingly passed.[1]

As it was found necessary at the close of the summer for the colonies to keep a strong garrison at Louisburg during the following winter in order to maintain what had been already gained, provision had to be made for the support of the quota which New Hampshire was called upon to furnish. Furthermore, measures had to be taken to secure the province from attack and provide for a vigorous campaign against the Indians, against whom the governor had declared war. Then, too, the expense hitherto incurred in the undertaking against Louisburg had greatly exceeded the sum granted by the legislature. As it was impossible to raise sufficient money for these purposes except by the issue of more bills of credit, the house voted to emit £12,000,[2] the redemption of which was to be secured by a tax, levied in twelve annual instalments, beginning with the year 1761. As the council was unanimously of the opinion that the time for the redemption of the bills was too distant, the house

[1] *Provincial Papers*, vol. v, pp. 333, 336, 338, 349, 387, 758, 767; vol. vi, p. 224. June, 1745. The £6000 was to be repaid in six annual instalments beginning Dec., 1761.

[2] *Ibid.*, vol. v, p. 377. September, 1745.

finally agreed to emit the money upon condition that the time for repaying it was extended but three years beyond the time set in the previous act. Thereupon, the councillors declared that they would agree to the proposal, provided the money was used for the purposes of the expedition only. As the representatives, however, were not willing to strike so large a sum for that purpose, they sent up a new resolution proposing an issue of £8000 to defray the unprovided charges of the expedition and to support the men who were to remain in garrison at Louisburg. Furthermore, they stipulated that the money should be redeemed in four equal instalments from and after 1762, unless the king should reimburse them, in which case the money received from the Crown was to be used as a fund for the immediate redemption of the bills. As this was acceptable to the governor, the necessary bill was quickly drawn and approved. Thereupon, the house resolved that a committee should prepare an address to the king similar to that proposed the previous June. In addition they desired to solicit his Majesty for a reimbursement of the great expense they had incurred in the campaign against Louisburg. Accordingly a memorial and a petition were drawn up in due form but it was not until the following February that the house voted to forward them to the colony's agent in London who in turn presented them at the proper offices.[1]

In June, 1746, the legislature was convened in special session in consequence of the receipt of orders from England relating to an expedition which had for its object the reduction of Canada. Inasmuch as the future tranquillity of the continent depended, the governor said, upon the success of the expedition, he hoped the two houses would exert themselves

[1] *Provincial Papers*, vol. v, pp. 383, 384, 401, 772, 773, 775, 779, 852.

to the utmost and do everything that would contribute to a speedy embarkation of the troops, for the daily captivities and frequent murders committed by the Indians at the instigation of the French made it their duty to engage with heart and soul in the enterprise, which was an undertaking that must be viewed in all its consequences, and "though it may be attended with a great expense, it will not," he said, "be perpetual, for, if it should please God to give success to his Majesty's arms in the reduction of Canada, the Indians must then become our unalterable friends, the expense of scouts and inland frontiers would wholly be taken off; a flow of wealth and an increase of inhabitants must consequently be introduced and everyone would enjoy the blessings of peace under his own vine." [1]

As the assembly well knew how true the governor's statements were and fully realized the advantages that would accrue from the success of the expedition, it unanimously voted to raise as many men as the executive could enlist and get ready for embarkation by the end of July, and, in order to provide the necessary funds, it agreed to emit £60,000. As it could not act authoritatively, however, when convened in special session, the necessary act for the emission of the money could not be legally passed until the time came for the regular session. Then the work of the convention was fully ratified and confirmed. At that time, too, Wentworth informed the assembly that, as the king was to pay, clothe and arm the men raised, there need be no other fund for the redemption of the bills than the king's promise to pay. Accordingly, the two houses voted that, when the Crown reimbursed the province, the money so obtained should be put into the treasury for the redemption of the emitted bills. If, however, the amount received fell short of what was actu-

[1] *Provincial Papers*, vol. v, pp. 427, 428, 814.

ally expended in the enterprise, then the deficiency should be made up by levying a tax upon polls and estates.[1]

In 1747 the home government authorized Governor Shirley and Commodore Knowles to settle and adjust with the several governors all matters relating to the expedition,[2] in order that an account of the same might be laid before Parliament, to the end that provision might be made for reimbursing the several colonies. That the soldiers, however, might not be kept out of their pay, pending the settlement of the matter by the House of Commons, the commissioners were requested to ask the several governors to secure from their assemblies the necessary credit for the payment of the troops. Accordingly, upon the receipt of a letter from the commissioners, Governor Wentworth called upon the assembly to loan the king such a sum as was necessary for the end in view.[3] After taking the matter under consideration, the representatives informed the governor that they were in the main disposed to lend the credit asked for, as far as the money in the treasury would go, and would make up the remainder by a further emission, provided the king's promise of a reimbursement was the only fund required for the redemption of the bills.[4] Before, however, the vote reached the governor, he had issued orders for an adjournment. After debating the question the following month the representatives concluded not to advance the sum required until the muster rolls of the men who had been employed in defending the frontiers during the past year had been allowed and paid out of the money then in the treasury. As for the council, that body was of the opinion that it would be best to loan the king money upon the same terms as provided in

[1] *Provincial Papers*, vol. v, pp. 430, 435, 437, 813, 814, *passim*.
[2] *Ibid.*, vol. v, p. 537.
[3] *Ibid.*, vol. v, p. 535.
[4] *Ibid.*, vol. v, p. 539.

the £60,000 act which stipulated that, if the king did not repay it, the people should be taxed for that amount or for such a sum as the Crown did not pay. Furthermore, it said that, if money was borrowed to pay the soldiers who had been engaged in the defence of the frontiers, there ought to be a fund to bring it in immediately. For these reasons, it refused to consent to the vote of the other house.[1] Thereupon, a committee of the two houses was chosen to confer upon the easiest and most equitable method of defraying the expense of the frontiers. In due time, the committee presented a report, stating that, inasmuch as the bills of credit that still remained in the treasury after the expedition against Canada was over, could, by virtue of one of the provisions of the act for the emission of the £60,000, be disposed of in such manner as the general assembly might order, the cost of the frontiers should be provided for out of the bills thus remaining. Although the house immediately voted to accept the report in its entirety, the council wanted the money, thus taken out of the treasury, repaid within the next three years. The house, however, would not agree to it, but expressed a willingness to have it redeemed in 1761 and 1762. As the council consented to this, the report was adopted by both houses upon that condition. Since the governor insisted upon some other method, the representatives at last resolved to emit £4000, but the council refused to concur, whereupon the former told the governor that as there was no other way of raising the money except by levying upon the polls and estates a tax which it was impossible to collect in time to pay off the men by the end of the year, they had nothing further to offer and therefore prayed that they might be allowed to retire to their homes. But the governor told them that until the king's business was effec-

[1] *Provincial Papers*, vol. v, pp. 546, 549, 551, 897.

tually done, he could "neither answer it to the king . . . either to adjourn, prorogue or dismiss the present assembly . . . " He therefore desired them to dispatch the business before them as it was then the sixth week of the session. Thereupon, they voted to loan the king an amount sufficient to pay off the troops engaged in the expedition provided the governor would assent to their previous vote upon the report of the committee of the two houses. This the governor did the following day, so that payment was provided both for those who had been engaged in the expedition and for those who had been in service upon the frontiers.[1]

In 1748, Thomas Hutchinson of Massachusetts proposed that the money which the colonies expected Parliament would grant them as a reimbursement of the charges which they had incurred in taking and maintaining Louisburg and in raising the forces for the intended expedition against Canada should be used to redeem the paper currency, which, on account of its steady depreciation, was producing great injustice to trade and commerce and causing considerable other mischief. Although the scheme aroused much opposition, a bill was at length projected and presented to the General Court of Massachusetts to carry it into effect.[2] As many did not believe the scheme would prove effective or bring the relief contemplated unless the other New England governments coöperated, the General Court invited them to send commissioners to Boston to consider the question with the view of adopting one general and uniform method for the colonies concerned. In recommending the matter to the consideration of the assembly

[1] *Provincial Papers*, vol. v, pp. 553, 555, 557, 558, 560, 561, 562, 563, 899, 901.

[2] *Ibid.*, vol. v, p. 567.

in March, 1748, Governor Wentworth said he thought the question was highly worthy of the most serious deliberation, for, " if any method can be agreed upon to put a stop to the growing evil, it may happily prevent the ruin, which at this time threatens the country and more especially those whose salaries depend on the uncertain medium and who have hitherto had no equivalent for the depreciation thereof." Although the representatives expressed themselves in favor of the plan and declared themselves ready to agree to proper methods for obtaining so valuable an end, no commissioners were appointed. The following November, the Massachusetts General Court again urged the other colonies to adopt a joint plan for the redemption of the paper bills. As the New Hampshire assembly was not then in session and the governor did not think it necessary to summon it just at that time, the matter was not acted upon and as the other colonies also failed to send commissioners, Massachusetts finally determined to proceed alone.[1] Accordingly the silver was bought and the paper bills were exchanged. The shock that many expected did not occur. Business soon adjusted itself to the new conditions. Trade revived and money was plentiful. In the other colonies, however, the effect of the silver currency was to depress trade and commerce and cause a still further decline in the value of the paper bills.[2]

[1] *Provincial Papers*, vol. v, pp. 564, 566, 574; Felt, *Massachusetts Currency*, p. 118 *et seq.*

[2] *Provincial Papers*, vol. v, pp. 567, 590, *passim*, vol. vi, p. 69. For purposes of exchange one piece of eight was equal to a 44*s.* bill of the old tenor or to a 11*s.* bill of the new tenor. According to an account, found among the Belknap papers, of the rate of silver per ounce in New Hampshire, it appears that silver had risen in value in the province from 8*s.* per ounce in 1710 to 21*s.* in 1730. Then there was a slight decline until the close of 1732. In 1733 it advanced from 21*s.* an ounce, at the beginning of the year, to 27*s.* at the close. In 1734 it fluctuated between

Of the money granted by Parliament as a reimbursement of the charges incurred by the various colonies in taking and maintaining Louisburg and in promoting the intended expedition against Canada, and in sending assistance to Nova Scotia, New Hampshire received, for the part it took in the former £16,355: 13: 4 and for the charge incurred in the latter £21,446: 10: 10½.[1]

After all fees, charges and the agent's debts were deducted, the amount left to the credit of the colony was close to £29,100 sterling. This it was fully expected in England the province would utilize to redeem its paper bills, and Mr. Thomlinson, the province agent, also held this opinion.[2] In case however the assembly did not want to do this immediately he suggested that he be empowered to invest the money in some of the public funds where it would bring in an annual income of some £900 sterling. As the assembly, how-

24*s*. and 27*s*. an ounce. From that time on until 1743 it fluctuated very little. Then there was a steady advance. In 1746 it changed from 37*s*. at the beginning to 50*s*. at the close of the year; in 1747 it fluctuated from 53*s*. to 60*s*., closing at 58*s*., and from that time on until 1750, when it began to decline, it vacillated between 54*s*. and 60*s*. See *Collections of the New Hampshire Historical Society*, vol. v, p. 258.

[1] *New Hampshire State Papers*, vol. xviii, pp. 367, 373, 381, 383; *Provincial Papers*, vol. v, pp. 508, 590, 914. According to one account, the expenses of the Louisburg expedition as approved by the two houses in June, 1748, amounted to £22,970: 10: 5. Another account submitted to the assembly the previous June, gives as the sum expended £26,489: 16: 8½. It was probably in reference to the latter that the agent in a letter to Theodore Atkinson, under date of November 18, 1747, said "there are some palpable errors and great differences between some particular charges and the vouchers for the same." According to the account of the charges incurred in the Canada expedition, submitted by the province agent to the authorities in England, the sum expended in promoting the latter enterprise was £31,298: 8: 11¼. See also *Provincial Papers*, vol. vi, p. 144.

[2] *New Hampshire State Papers*, vol. xviii, pp. 371, 386; *Provincial Papers*, vol. vi, pp. 130, 227.

ever, which was summoned, in January, 1749, was never organized in consequence of the controversy which arose in connection with the governor's right to disapprove their choice of speaker and his right to summon representatives from whatever towns he chose, no business was transacted by it, so that it was not until the fall of 1752, after the assembly had been dissolved and another election held, that a vote was passed [1] authorizing the agent to put the entire sum into such public stocks or funds as he judged were most advantageous for the province. At the same time a committee of the two houses was appointed to forward the vote and correspond with the agent in regard to the matter. This the committee did, and, in the first letter which they dispatched, they declared that placing the money in the public funds or stocks was the only remedy they had to keep the province from "sinking," for, if the sterling money was used for the immediate redemption of their bills of credit, it would by no means answer the end proposed, as they had a great number of the bills outstanding and very heavy debts. Accordingly, early in 1753, the agent purchased with part of the money £20,000 of 3% annuities of 1751, while the balance he put out at interest at the same rate, until he could place it advantageously in the public funds. He then informed the members of the committee of what he had done and desired them to send him a proper power of attorney, in order that he might accept the money in the name of the entire legislature and receive the interest arising therefrom as it became due. But it was not until April, 1754, that trustees were appointed to make and execute the necessary power of attorney.[2]

[1] *New Hampshire State Papers*, vol. xviii, p. 402; *Provincial Papers*, vol. vi, pp. 143, 150. For the particulars relating to this controversy see *supra*, pp. 139, 159.

[2] *Provincial Papers*, vol. vi, pp. 144, 227, 273; *New Hampshire State Papers*, vol. xviii, p. 423.

In consequence of the confusion and inconvenience that arose on account of the constant depreciation of the bills of credit, Parliament, in 1751, passed an act to regulate and restrain the issue of paper money in New England.[1] In the preamble, it was stated that the act which had been passed by Parliament in the reign of Queen Anne, entitled "An act for ascertaining the rate of foreign coins in her Majesty's Plantations in America" had completely failed of its object in the colonies of New Hampshire, Massachusetts, Rhode Island and Connecticut in consequence of the emission by those governments of great quantities of paper bills of credit which were made legal tender in payment of debts, dues and other demands. As these bills had been depreciating in value for many years past, debts during that time had been paid and satisfied with money of a value much below what had been contracted for. The result was that the trade and commerce of the king's subjects had been greatly discouraged and prejudiced by the confusion which had been thereby occasioned in dealings and by the lessening of credit in those parts. To effectually prevent, therefore, and remedy these inconveniences, it was now enacted that after September 29th, 1751, it should not be lawful for the governor, council or assembly in any of the New England colonies to make or pass any law, "whereby any paper bills of credit of any kind or denomination whatsoever shall be created or issued under any pretence whatsoever or whereby the time limited or the provision made for the redemption of the bills now outstanding shall be protracted or postponed or whereby any of them shall be depreciated in value or whereby the same shall be ordered or allowed to be re-issued or to obtain a new and further currency." But, if such laws were passed, despite this prohibition, the present act declared

[1] *Laws of New Hampshire, Edition of 1771*, p. 251.

that they should be null and void. Furthermore, it was stipulated that all outstanding bills should be punctually redeemed according to the tenor of the acts whereby they were issued. Liberty, however, was granted to issue such a number of bills of credit, bearing interest, as were requisite for the current service of the government, provided sufficient provision was made to secure their redemption "in a reasonable time not exceeding the space of two years," while for extraordinary emergencies, such as war or invasion, issues of a similar character might be made, if provision was made for the redemption of the bills within a period not exceeding five years. In no case, however, were the new bills to be made a legal tender. Finally, it was provided that governors who consented to the emission of bills in violation of the present act should be immediately dismissed from their governments and forever rendered incapable of holding any public office.

In the summer of 1753, the assembly resolved to lay before the king an account of the financial condition of the province. In the memorial which was prepared and forwarded to the agent for presentation to his Majesty, the circumstances which had compelled the province since 1742 to resort from time to time to further emissions of bills of credit were carefully set forth, the purposes for which the money was issued were clearly explained and the time and the amount of the various emissions were correctly given. Moreover, the present situation in the province was discussed at some length and the necessity of investing the money received from Parliament in the national stocks or funds and using it as a sinking fund for the redemption of the bills emitted for the Canada expedition was made plain. As the interest arising from the amount thus invested, together with the money raised by taxes upon the polls and estates, would be sufficient to redeem all their bills within

the time designated in the various acts of emission, they hoped the scheme just mentioned would meet with the king's approbation, for, unless they were favored with his Majesty's permission to put the plan into effect, they could see no way either of paying the public debts or of supporting the honor and credit of the government, inasmuch as the inhabitants were already burdened with an annual tax of £3800 for several years to come. This, added to what had to be raised for the necessary support of the government, amounted to double the sum ever raised in the province in any former year and could not, in their opinion, be raised, if the paper bills should be immediately called in and redeemed, because there was no silver or gold passing among them.[1]

In acknowledging, in October, the receipt of the memorial, the agent told them that, although the presentation of a memorial to the king was, in his opinion, improper at all times, this one was particularly improper in that it prayed for leave to place in the funds money which was already there. As for the disposition of that money, he assured them that they had nothing to fear on that head, provided they remained quiet and conformed in all other money affairs to the late act of Parliament, which, he said, they must by all means do. As the presentation of the memorial, therefore, would only be involving them in such difficulties as might not easily be got over and raise all their enemies in judgment against them he would not present it to the king but keep it for future reference.[2]

As the assembly, which was summoned in January, 1749,[3] was, for the reasons previously mentioned, continued in exis-

[1] *Provincial Papers*, vol. vi, pp. 220, 222, 223 *et seq.*

[2] *Ibid.*, vol. vi, p. 226. October, 1753.

[3] *Ibid.*, vol. vi, pp. 69, 125. The Assembly first met January 3, 1749, and was dissolved January 4, 1752.

tence the full three years allowed by the triennial act without ever having been organized, considerable confusion and many inconveniences arose. The province debts remained unpaid and the charges of the government were unprovided for. Finally, when a new assembly was convened in September, 1752,[1] Governor Wentworth strongly recommended the restoration of a happy union between the respective branches of the legislature and a due observance of the several powers which each branch was invested with, for that would prevent unnecessary controversies and result in the peace and prosperity of the province. He then went on to say that it would give him great satisfaction to meet them "at a time of such difficulty, disposed sincerely and with one voice, to extricate the government out of its present and growing distresses," for unless a speedy remedy was found and applied, the posture of their public concerns would not only bring the government into the deepest disgrace but the consequences might be of a more dangerous nature. In reply,[2] the representatives assured him that they earnestly desired the restoration of a happy union of the different branches of the legislature and were sincerely disposed both to extricate the government out of its present difficulties and to advance its true interests.

The following spring, after the various accounts had been examined and the different claims adjusted, the house proposed that they should be paid out of the money that was in the treasury. Accordingly, an act was drawn up for issuing out of the treasury the sum of £12,500—to be repaid by a tax, levied on the polls and estates in five annual instalments, beginning with the year 1753. After the council signified their occurrence in the measure,[3] the governor asked them

[1] *Provincial Papers*, vol. vi, pp. 127, 130. [2] *Ibid.*, vol. vi, p. 136.
[3] *Ibid.*, vol. vi, pp. 189, 190, 210, 211.

whether his assenting to the act would not be contrary to the true intent and meaning of an act of Parliament passed in November, 1747, by the terms of which governors were expressly forbidden, under the severest penalties, to consent to any vote, order or allowance for re-issuing bills then in the treasury or postponing the redemption of bills contrary to the provisions of the acts of emission.[1] Furthermore, he also wished to know whether such a consent, if contrary to the act of Parliament, would not be *ipso facto* void and consequently useless for the purposes intended to be answered by it. In reply, the council said that they were of the opinion that his assenting to the measure would be in no way contrary to the act of Parliament nor to the true intent and meaning thereof. Consequently they would advise him to approve it, which he then deemed it best to do.

In the spring of 1754, an act was passed, granting the king £6000. The following summer, when the Indians began their depredations along the frontier, the legislature had to be convened in special session because the assembly was at the time under prorogation and there was no money in the treasury that could be used for the support and maintenance of the troops required. Although Governor Wentworth, as on several occasions in the past, pressed the members to set aside a fund which could be used in just "such emergencies and unforeseen exigencies," he could not prevail upon them to do more than provide for what they thought was sufficient to cope with the situation as it appeared to them from the reports which had been received. The consequence was that when it became known that the Indians were more numerous and more active than had been anticipated, the governor was obliged to issue a call for another special session and that, too, within fifteen days of the

[1] *Provincial Papers*, vol. vi, p. 211. May, 1753.

preceding one. Although the assistance deemed necessary was granted, no provision was made for a fund for use in cases of emergency. When, therefore, the time, designated in the grants was up, the governor, although apprehensive lest there should be further raids, deemed it expedient to advise the officer in command of the forces to dismiss them, inasmuch as it was uncertain whether the assembly would pay them for any longer time than their grants extended to.[1]

Early in 1755, an act was passed granting £1500.[2] As it was also necessary at that time to raise a considerable sum in order to guard the inland frontiers and carry into execution the king's commands in regard to putting the province in a proper posture of defence, the house voted to levy a tax of one penny an acre upon all improved or unimproved land granted or laid out into townships but the council refused to concur. Later the attempt was renewed but the council could not be prevailed upon to give their concurrence, claiming that the tax was unjust and unreasonable in that the poorer sort of people would pay the largest portion of it.[3] In 1756, in addition to the tax of a penny an acre on land, the representatives proposed, as a means of increasing the revenue, to levy not only an import duty on rum and wine and additional excise duties on all intoxicating liquors sold within the province but also a tax on green and black tea. The council, however, would only concur upon condition that the tax on land applied only to improved land. This the representatives would not agree to. Thereupon, the latter sent a message to the governor, saying that they could not think of any way to defray the defence of the frontiers that was "so just and equitable" as that which they had

[1] See *supra*, p. 196; *Provincial Papers*, vol. vi, pp. 285, 296, 299, 314, 316, 319, *passim*.

[2] *Ibid.*, vol. vi, p. 337.

[3] *Ibid.*, vol. vi, pp. 341, 348, 448, 454, 473.

proposed. Although, they continued, the expense would be a grievous burden, especially when added to what was already laid upon them for services of that and other kinds already done and still intended to be done by them for the king, still, in faithfulness to their constituents they must be excused from any charge for the defence of the frontiers, unless the lands benefited thereby bore a share of the tax.[1]

To defray the expenses of the force which the province voted to contribute as its quota toward the proposed expedition against the French on Lake Champlain, the two houses passed a bill, providing for the emission of £30,000 in bills of credit. As some of the provisions of this measure, however, infringed upon the prerogative, violated the royal instructions and were inconsistent with the positive directions which the governor had but recently received from the Lords of Trade, his excellency called upon the assembly to make such changes in the bill as would meet these objections but, as explained in another connection, the representatives doggedly refused to comply, whereupon the governor, both to prevent any further delay and to insure the colony's participation in the undertaking, deemed it his duty to approve the act just as it was.[2] As the province bills of credit were no longer accepted in Massachusetts and New York, some sterling money had to be obtained for use in places where New Hampshire bills had no currency. This was secured by drawing bills of exchange on the agent in England,[3] the money so drawn being the interest of that invested there in the public funds. As a previous assembly, however, had passed an order to the effect that the interest arising from such funds should be used to redeem the paper bills issued

[1] *Provincial Papers*, vol. vi, pp. 473, 486.

[2] *Ibid.*, vol. vi, pp. 353, 355, 358, 359, 363, 368, 370, 371, 373, 376; *supra*, p. 188.

[3] *Ibid.*, vol. vi, pp. 376, 385.

for the intended expedition against Canada, it was now provided that a sum of money in bills of credit equal to the amount drawn in sterling should be put into the treasury and exchanged for those emitted for the Canada expedition, which latter bills were then to be burned. As sterling money was often needed both in the various expeditions that followed and for other purposes, it was generally obtained in this way and, when the interest was no longer sufficient to answer the purpose, the agent was authorized to sell so much of the stock invested in the public funds as was necessary to meet the bills of exchange.[1]

To defray the expenses of the reinforcement which was dispatched in the fall to the scene of action, there was a further emission of £15,000.[2] Although the troops were sent off with all haste, their services were hardly needed, for it was decided not to press forward against Crown Point that season but to secure the position the English forces then held at the head of the lake by erecting a fort there. When, early the following year, Governor Wentworth laid before the two houses the scheme for the renewal of the expedition and told them that he could "almost with certainty" assure them that the province would be reimbursed by the Crown, there was no immediate response. Although the inhabitants were anxious to have the operations against the French pushed with vigor, the financial condition of the province was very discouraging. The country was deeply in

[1] *Provincial Papers*, vol. vi, pp. 285, 294, 339, 376, 385, 410, 419, 428, 435, *passim*. According to the votes of the assembly, the ratio of sterling money to the bills of credit was as 1 is to 3 in 1754 and the beginning of 1755. From that time until September, 1755, the ratio was as 1 is to 3¼; then it was as 1 is to 3¾. In business transactions, however, the ratio was greater and rapidly advanced from that time on.

[2] *Ibid.*, vol. vi, pp. 421, 425, 428, 433, 436, 443; vol. xviii, p. 431. For details concerning the necessity of this and the later campaigns, see chap. vii.

debt, while the paper bills afforded but poor credit and were no longer accepted as currency beyond the bounds of the province. The frontier settlements, too, were greatly exposed and crying loudly for aid, while the plan to raise money for their defense by levying a tax on land and by imposing impost and excise duties on certain things was thwarted by the council, which refused to tax lands that were unimproved. How to procure the necessary funds was the problem which confronted the province. Although some favored another emission of paper money, others were of the opinion that it would be useless to attempt another issue, fearing that the bills would no longer take the place of money. Moreover, outside the province, sterling money was absolutely essential to conduct some of the services connected with the undertaking. To procure the latter, however, the governor proposed that a loan of £3,000 sterling should be obtained from Governor Shirley. Although the latter was extremely sorry to find that Governor Wentworth had met with so many difficulties in raising the men, still he hoped that New Hampshire would follow in the wake of the other colonies, for he was inclined to think that any colony which refused to do its duty and deserted the common cause would run a risk of forfeiting its title to his Majesty's bounty and favor. Furthermore, he believed the paper money would answer the end of the proposed service for another year, as in Connecticut and Rhode Island. As for loaning the province £3000 sterling, he said he was willing to do that, provided the province raised 500 men and engaged to repay the sum advanced out of the first money which should be sent over from England or by levying a tax on the inhabitants in 1757 and 1758. This the two houses agreed to do, whereupon Wentworth, who did not think that £3000 sterling would be sufficient to answer the various purposes for which such money was absolutely necessary, pressed

Shirley to augment the sum to £6000, which the latter cheerfully consented to do upon the same terms as before.[1]

At the same time the representatives proposed an issue of £30,000 in bills of credit, agreeing that one-third of them should be redeemed in 1759 and the balance in 1761.[2] In case, however, Parliament reimbursed the colony for the expedition, the money so received was to be put into the treasury and used to redeem as much of the paper currency as possible. After the necessary bill, which was similar in form to the one enacted the previous year, had passed the two houses, the governor sent down a message in which he said that he observed with the greatest concern the encroachments made on the prerogative and the necessity he would be driven to of dispensing with the royal instructions by the reservations and appointments therein made. These, he continued, rendered it liable to so many objections on his part and were so manifestly injurious to the king's service that, in the common course of business, the bill could never obtain his consent and nothing but the necessity of the public service would now induce him to consent to it. For these reasons, therefore, he hoped that they would reconsider the measure and make it agreeable to their constitution and not take advantage of the present necessity by continuing their encroachments on the royal prerogative, or take measures that were dishonorable to any state or government, or compel him to disregard entirely the king's instructions, which would be the case if he consented to the bill as it was. On the other hand, should he refuse his consent, the intended service would, he said, be at an end. In reply, the representatives declared that any attempt to infringe upon the pre-

[1] *Provincial Papers*, vol. vi, pp. 443, 459, 463, 473, 482, 485, 487, 489, 499, 503, 505, 506, 520, *passim*.

[2] *Ibid.*, vol. vi, pp. 503, 507, 508.

rogative was far from their thoughts and, that, upon perusing the several bills passed on similar occasions, they found they were all as much like the present one as the nature and circumstances of the case would admit. They, therefore, hoped his excellency would be pleased to sign the bill, for they were convinced no blame could arise therefrom. Although several messages now passed between the governor and the assembly relating to the matters in dispute, the former found it impossible to prevail upon the latter to make the alterations desired. Furthermore, the house refused for a time to send up the bill for borrowing £6000 sterling until Governor Wentworth had affixed his signature to the £30,000 bill, but as the governor refused to take any action upon the latter unless the former was before him and assured them that he would not pass one without the other, the bill was at last sent up, whereupon his excellency signified his approval of both measures. At the same time, another bill for £5,750 was passed in order to discharge the muster rolls of those who had been engaged in protecting the frontier and to pay certain charges in connection with the previous expedition and with the reinforcement.[1]

With the view of keeping up the value of the paper money which was rapidly depreciating and of preventing the exorbitant price that was then being given in the province for Spanish milled dollars, the house in July appointed a committee to take the matter under consideration and to prepare a bill which would answer the ends proposed,[2] but as the assembly was dissolved the same day, nothing was accomplished.

In December, Wentworth informed the assembly that, of the £115,000, granted earlier in the year by Parliament to

[1] *Provincial Papers*, vol. vi, pp. 509, 511, 512, 513, 515, 516, 517, 519, 520, 590. 1756.

[2] *Ibid.*, vol. vi, p. 532. July, 1756.

the various colonies, as a free gift and reward for their past services and as an incentive to future effort, New Hampshire received £8000.[1] At the same time he referred to the melancholy situation of their public affairs and said that the way to extricate themselves out of the growing evil well deserved a parliamentary consideration. Furthermore, he declared that, on account of the constant depreciation of the paper money, it was no longer possible to fix an equivalent in that currency for proclamation money, and it is evident, he continued, "that paper money will no longer be of use to the public nor serve as a medium in mercantile concerns, unless it is to distress and involve the subjects in greater difficulties than they at present endure, which will be a hard matter to point out." However, he would be glad of an opportunity to consent to any measures that might have a tendency to promote the prosperity of the province and that might relieve the inhabitants from the distress which threatened them, and which, if not remedied in due time, would give rise to greater evils than could be conceived. Although the representatives expressed a willingness to do all that they could to extricate the province out of the many difficulties from which it was suffering, nothing was actually done.

As the operations against the French had been unsuccessful, another expedition against Crown Point was planned for 1757. To defray the expense of the troops they intended to raise, the two houses proposed a further emission of £20,000.[2] Upon being informed of this, Wentworth sent

[1] *Provincial Papers*, vol. vi, pp. 542, 544, 588; *New Hampshire State Papers*, vol. xviii, p. 443. Of the £115,000 Massachusetts received £54,000; New Hampshire, £8,000; New York, £15,000; Connecticut, £26,000; Rhode Island, £7,000, and New Jersey, £5,000; exclusive of all fees and other charges, New Hampshire received in Portuguese gold and Spanish Milled Dollars £7,639 : 9 : 7.

[2] *Ibid.*, vol. vi, pp. 557, 559, 564.

down a message [1] in which he said that he was sorry that no other method could be agreed upon to carry on the expedition, for he was afraid that another emission would be attended with disastrous consequences. Moreover, he was persuaded that it would not merely occasion great delay in levying the men and, as in the past, drive the best and ablest of them into the service of the other governments where they would receive their pay in silver, but, in his opinion it would be useless to attempt to raise them at all with paper money. However, if they could find no other way to obtain the funds, the paper must do as far as it will. As the house proposed no other method, a bill was accordingly passed for the emission of £20,000. Moreover, as sterling money was absolutely necessary for certain services, it was decided a few days later to take what sterling money was needed out of the sterling funds which were then in the treasury.[2]

As a result of the military operations undertaken against the French, the latter seemed more firmly intrenched than ever in the king's dominions. Notwithstanding this, however, the inhabitants were still willing to make what sacrifices were necessary to push the war to a successful conclusion; but how to obtain funds sufficient for the end in view was the perplexing problem they had to solve, for, in addition to the sterling money which had been drawn in bills of exchange on the agent in England and the sum which had been received from Parliament, a very large sum in new tenor bills had been emitted during the past few years. Hereafter, however, such bills would not answer the purpose. Silver, or its equivalent, was absolutely necessary, and without it, it would be difficult to engage men for the

[1] *Provincial Papers*, vol. vi, p. 565.

[2] *Ibid.*, vol. vi, pp. 568, 570, 573.

next campaign.[1] Fortunately, the change which made William Pitt Prime Minister of England augured well for the colonies, for under him the war was carried on with renewed vigor and enthusiasm, and that no encouragement might be wanting to increase the zeal of the colonies, strong recommendations were made to Parliament to grant them a proper compensation for such expenses as they incurred, "according as the active vigor and strenuous efforts of the respective provinces" justly appeared to merit. For the campaign of 1758, New Hampshire issued £20,500 in paper bills of a different form and tenor from those previously issued. The new bills expressed on their face their value in sterling, were to be payable in one year with interest and were to be redeemed by bills of exchange of equal value on London.[2]

As the result of the various expeditions which were undertaken against the French during the summer, Louisburg, Frontenac, and Fort Duquesne fell into the hands of the English. As before, however, the attempt to drive the enemy from Lake Champlain proved a failure. When the news of these successes was received in England, it was resolved to retrieve the disappointment on Lake Champlain and improve the advantages gained over the enemy in other parts by pressing forward with all vigor for the purpose of reducing Canada. To defray the expense necessitated by

[1] *Ibid.*, vol. vi, p. 611; *New Hampshire State Papers*, vol. xviii, pp. 471, 472, 474, *passim*.

[2] *Provincial Papers*, vol. vi, pp. 656, 659, 660, 663, 665; vol. xviii, *passim*. To show how rapidly the new tenor bills had depreciated, it is only necessary to refer to the wages paid the soldiers. Thus, for the expedition made in 1755, it was agreed to pay the men £13 : 10, but the bills so depreciated that, when the muster rolls were made up, the committee made them up at £15. In 1756 the men were given £18; the next year £25, and in 1758, under the new form of bills called sterling bills, they received 27*s*. sterling, and the following three years they had 30*s*. sterling.

another expedition against Crown Point, New Hampshire emitted £17,000 in bills of credit of the same tenor and form as those emitted the previous year, except that the bills were made redeemable in three years instead of one. In the act providing for the issue of the £17,000, there were the same claims and reservations as were contained in several previous bills of a similar nature. Although the governor had been unsuccessful in his efforts to have the assembly, that had been dissolved the preceding October, withdraw such claims and reservations, he had not given up the struggle. Now, therefore, that another assembly was convened, he determined to make one more attempt to have the objectionable clauses eliminated. Consequently he told the members that, although the same claims and reservations had been made by the late assembly, that could by no means justify their present proceedings. He, therefore, thought that it was his duty to lay before them a paragraph of a letter which he had received from the Board of Trade under date of November 9th, 1758, in which the latter said that the exercise by the assembly of the power of nominating to civil and military offices, of conducting military services and of passing accounts, all of which was vested, by virtue of the terms of the royal commission, in the governor, was certainly improper and unconstitutional and operated "to weaken and abridge the dependence which the colonies ought to be kept in to the government of the mother country." This he earnestly recommended to them for serious consideration, saying that he could not doubt that they would act consistently and for the real interest of the people they represented if they withdrew such clauses as militated with their Lordships' sentiments and were repugnant to the powers which were vested in the Crown. The representatives, however, refused to make any of the alterations desired, on the ground that the act was agreeable to the practice of the

government for many years past and therefore consonant to their constitution. As a result, the governor was obliged to sign the measure as it was.[1] By the close of September, almost all of Canada was in the hands of the English, so that the colonists looked forward with real joy to its total reduction the following year. In order, however, to complete the conquest, the commander-in-chief of the English forces called upon the colony to provide the same number of men for the next campaign as were furnished for the last. Nothwithstanding the fact that the province was overwhelmed with debt and hardly in a position financially to render any further assistance, every branch of the legislature was eager to contribute all in its power to accomplish so desirable an object. Accordingly, provision was made for a further issue of £15,000 in sterling bills. Moreover, that no injury might accrue to the possessors of the bills, it was provided that they should receive the value, designated in the bills, in silver or gold or in bills of exchange with the interest which was due on each, but should the king reimburse the province, the sum thus obtained was either to be placed in the treasury and improved in redeeming the emitted bills or left in England to be drawn upon by bills of exchange payable to the possessors of the paper bills. A project to establish a provincial lottery, the net profits of which were to be applied towards the payment of the interest or part of the principal of the sum thus emitted, the assembly refused to adopt or sanction.[2]

As the expenses of the campaign that followed were far greater than had been anticipated, it was necessary for the legislature to provide more money in order to pay off the men. Moreover, as the royal troops in America were to be

[1] *Provincial Papers*, vol. vi, pp. 709, 710, 712, 717. 1759.

[2] *Ibid.*, vol. vi, pp. 735, 736, 744, 745, 752, 756; *New Hampshire State Papers*, vol. xviii, p. 499.

employed in other parts against the enemy, the colonies were called upon to furnish the forces required to keep Canada under control. After considerable debate it was resolved to emit £20,000 in sterling bills, both to pay off the forces engaged in the previous campaign and to provide the means for raising, levying and clothing the 534 men now required of the province.[1] Instead of immediately passing the act providing for the emission of the £20,000, Governor Wentworth told the representatives that he was astonished at their pressing him to assent to a measure which was so repugnant to the laws of Great Britain and their own constitution. For these reasons, he desired them to make such changes in the act as would meet his objections, but they refused to do so as the bill was, in their opinion, agreeable to the constant practice of the government and was drafted on the same plan as several others passed during the war. They failed, however, to say that the bills referred to were signed by the governor practically under compulsion. Realizing that it would be useless to contend further with the house, Wentworth affixed his signature to the bill.[2]

In 1762, the province was called upon not only to provide as many soldiers as it had furnished the year before, but also to raise 143 recruits for the royal regiments that were still in America. Accordingly, an act was passed providing for the issue of £10,000 in sterling bills. A few months later, in order to provide for the supply of the treasury and for the redemption of the outstanding bills of the emissions which had been issued many years before in aid of the Louisburg and Canada expeditions, £20,000 new tenor was ordered imprinted, one half to be disposed of as the general

[1] *Provincial Papers*, vol. vi, pp. 767, 772, 774, 777, 778, 779, 784, 785. 1761.

[2] *Ibid.*, vol. vi, pp. 785, 786.

assembly should order and one half to be used to redeem the bills just mentioned.[1]

When peace was made with France the following year, the long struggle which had been waged between the English and the French for supremacy in North America came to an end, with the former, whose flag now waved over the continent from the Atlantic ocean to the Mississippi, the victor. The thorn, which had been so long in the side of the colonies, was removed and the pioneer settlers were forever relieved from the insecurity what had characterized the past. Soon signs of returning prosperity were seen on every side.

After the close of the war, the legislature determined to rid the province of its paper currency as rapidly as possible. Accordingly, gold and silver coin was purchased and the money, which the agent received as the colony's proportion of the grants made by Parliament, was also devoted to the redemption of the bills of credit then in circulation. And, in so far as that money could thus be utilized, it lightened the burden of taxation, in that the sums thus obtained enabled the assembly to remit by that amount taxes which, in pursuance of the provisions of the various acts of emission, would have had to be raised for the redemption of the bills whose emission was therein authorized. Furthermore, a resolution was passed that no more bills of credit should be issued out of the treasury, but that all demands should be paid in silver and gold.[2]

As there were, comparatively speaking, but small sums of paper bills in circulation in 1765, the treasurer was ordered to receive the payment of the taxes then due either in gold or silver or in bills of credit at their present value. Conditions being similar the next year, the order was then

[1] *Provincial Papers*, vol. vi, pp. 810, 814, 818, 819, 844, *passim*.

[2] *Ibid.*, vol. vi, pp. 861, 878; vol. vii, pp. 49, 51, 52, 58, 65, 83, *passim*.

renewed.[1] In the supply bill which was passed in 1767 there was a grant of £400 with which to redeem outstanding bills of credit. But, as this did not prove to be sufficient, the treasurer, in February, 1768, was authorized to receive any further bills that were offered. Notwithstanding the fact that all the bills of credit, according to the acts of emission, should have been redeemed by the close of 1767, there were still a number in circulation in the summer of 1768.[2] The governor then most earnestly recommended that a sufficient fund should be provided to redeem the bills that were yet "passing as a currency solely upon the reliance placed on the good faith of the province." The house, however, apparently paid no attention to the matter. And, although his excellency again and again referred to the question, it was not until December, 1770[3] that an act was passed, authorizing the treasurer to borrow money to redeem what bills of credit yet remained in the possession of private persons and to give "notes of hand as treasurer in behalf of the province" to secure the repayment of the same and, in case the sum borrowed proved insufficient to redeem all the bills, the treasurer was directed to give "notes of hand" for such sums as were required to accomplish the end in view. A few days later, he was also ordered to receive bills of credit in payment of taxes. By this means, almost all of the paper money was redeemed. Still, in 1772, there were a few bills yet outstanding.[4]

In June, 1764, the year following the close of the war, a

[1] *Provincial Papers*, vol. vii, pp. 80, 83, 95, 108.

[2] *Ibid.*, vol. vii, pp. 85, 152. It should here be said that in 1763 Parliament forbade the passage of any more acts providing for the issue of paper money.

[3] *Ibid.*, vol. vii, pp. 187, 190, 198, 260, 263; *New Hampshire State Papers*, vol. xviii, p. 598.

[4] *Provincial Papers*, vol. vii, pp. 265, 302.

committee had been appointed to take under consideration the state of the currency with the view of deciding upon the steps necessary to establish silver and gold as a legal tender. At the same time, it was also to consider whether it would not be proper in some measure to restrain persons from taking so high a rate of interest as was commonly charged in the province. As a result of its deliberations, two bills were drafted and passed by the two houses. One set a stated value on coins current in the province, while the other prevented the exaction of exorbitant interest. Although both bills were sent to the governor several weeks before the assembly was dissolved, neither of them received his approval.[1]

When, a few months later, another assembly was summoned, both bills were re-introduced. After waiting some time for the governor to pass upon them, the representatives presented several messages, pressing him to assent to the measures. In one of these they said that, as the remaining business of the session depended entirely upon the passage of the two bills, they could not with any propriety pass a supply bill or make a grant for the discharge of the provincial debts until they had his excellency's determination on those bills. In reply, the governor assured them that, as soon as the act to enable the treasurer to issue his warrants for the supply they intended to make, and the grants, came properly before him, he would either consent to or reject the whole that depended on the two acts in question.[2] The house, however, determined not to proceed upon any further business until the bills were disposed of, and sent up a committee to press the governor to approve the bills, and to

[1] *Provincial Papers*, vol. vii, pp. 58, 74, 77. In the second bill, the legal rate of interest was fixed at 6 per cent. For the provisions of both bills, see the pages in vol. vii here given.

[2] *Ibid.*, vol. vii, pp. 69, 73, 74, 75.

request him, in case he could not then assent to them, to adjourn the assembly until he had fully made up his mind to approve or reject them. Thereupon, the governor signified his approval of both measures.

The two acts then continued in force until word was received that both had been repealed in the summer of 1768 by the king in council.[1] Upon being informed of the repeal, the assembly, in February, 1769, appointed a committee to consider what should be done to establish the value of money and prevent excessive interest being charged. As a result, another act was passed to restrain persons from taking exorbitant interest, and a proclamation was issued by the governor, fixing the rates at which gold and silver coins should pass within the province.[2] As this proclamation was not warranted by the act of Parliament, which regulated the value of foreign coins in the plantations, it was deemed by the authorities in England null and void from the beginning. Accordingly, an additional instruction was issued in December, 1770, requiring the governor to take such measures, with the advice of the council, as were requisite to put an immediate stop to its operation. Furthermore, in case it was necessary to make provision by law to establish all proceedings made under color of the proclamation, he was permitted to assent to the passage of such a law as would answer that purpose.[3]

When Wentworth informed the representatives of the matter, in April, 1771,[4] the latter expressed surprise that the king had taken such action, for they declared it left the province destitute of any legal standard by which the value

[1] *Provincial Papers*, vol. vii, p. 199. Order in Council, dated 12 August, 1768.

[2] *Ibid.*, vol. vii, p. 274. This act was approved by the king; *New Hampshire State Papers*, vol. xviii, p. 598. The proclamation was dated 2 March, 1769.

[3] *Ibid.*, vol. xviii, p. 598. [4] *Provincial Papers*, vol. vii, pp. 281, 282.

of the money passing among them might be regulated. However liable the proclamation was to exceptions, still it was, they said, the only rule they had, and, as it set the value of the coins at the same rates as were established in the neighboring colonies with the royal approbation, they could not conceive the reason that influenced the king in disallowing it. When they learned the reason, they would cheerfully do what was necessary on their part "to establish a medium in the province, the usefulness whereof in the administration of justice as well as in levying taxes for his Majesty's service is self-evident." In the meantime, they would make the necessary grants and supplies according to the current value of the coins passing among them and would request the governor to lay before the king the unhappy situation of the province for want of an established currency that was a legal tender, to the end that the same might be considered and redressed. Finally, they declared themselves ready to confirm what had been done under color of the proclamation. Accordingly, a law was enacted for that purpose, and at the same time it was voted that all grants, allowances, assessments, and judgments and all payments in business transactions should be made until further notice in the same currency as was designated in the supply bill which they were then considering.[1]

Although the excitement and agitation which followed the passage of the various acts designed by Parliament to raise a revenue in America was by no means so intense in New Hampshire as in some of the other colonies, still the views of the inhabitants coincided with those entertained by their brethren in those colonies, and the position which their representatives in the assembly took with reference to the question of taxation therein involved is clearly set forth in several of their addresses, resolves and other public documents.

[1] *Provincial Papers*, vol. vii, p. 282.

As the demands made upon the government greatly diminished after the conclusion of peace in 1763 and after the redemption of the bills of credit, the taxes became less burdensome and were in reality very light, especially when compared with what had been paid annually for many years past. On at least two occasions after the war the representatives used the question of supply to force the governor's hands. In 1765, as has been already noticed, they refused to make any provision for the supply of the treasury until the governor assented to the two acts, relating to the value of money and the taking of exorbitant interest. And, again in the spring of 1768, they refused to take under consideration the question of supply until the province was divided into counties, and, although the governor remonstrated with them, it was not until they received assurance from England that the question had been favorably acted upon there, that they finally consented to pass the supply bill.

With the continuance of peace, the province became more and more prosperous. The fear of the tomahawk being removed, many new settlements rapidly sprang up in the wilderness, the virgin soil attracting many from the other colonies, while communication between the different parts of the country was greatly facilitated by the construction of new roads. The population also increased wonderfully, while trade and commerce, relieved of the depressing effects of an ever-fluctuating and depreciating paper currency, gradually revived. Higher education, too, was encouraged, the province became free from debt and the wealth of the country steadily increased so that it is quite safe to say that the province was never in a better financial, industrial or social condition, or in a more prosperous and flourishing state, than during the period immediately preceding the Revolution.

CHAPTER VI

Justice

Since New Hampshire not only belonged to England but was settled by people from England, it is but natural that its judicial system should be based upon that which prevailed in the mother country. At first, however, inasmuch as there was no central government nor in fact any government imposed by external authority, the individual settlements were constrained by circumstances to adopt such regulations for administering justice and preserving the peace as each found necessary and expedient. But later when Massachusetts assumed authority and exercised jurisdiction over the territory included in Mason's patent, justice was administered in accordance with the laws of that colony, some of which were repugnant in letter at least to the English statutes. At last, in 1677, the English judges gave it as their opinion that the Bay's claim of jurisdiction was invalid. Furthermore, they declared that all governmental powers there were vested in the Crown. The way being thus cleared, New Hampshire two years later was erected into a royal province, and, except for a few years immediately following the deposition of James II, it remained under the immediate government of the king until the time of the Revolution.

In order to get some idea, therefore, of the judicial system during the provincial period, it will be well to examine the commissions and instructions and take into consideration also the part which the legislature took in the erection

and regulation of the courts and in the enactment of laws pertaining to the administration of justice and the preservation of the peace.

Some time after tidings had been received of the king's intention to separate New Hampshire from the government of the Bay, an order was dispatched to the Boston magistrates, restraining them from exercising any further authority or jurisdiction over the inhabitants there. Furthermore, a royal commission was issued for the government of the territory thus affected. In the latter it was stipulated that, when the new government went into operation, the settlers should repair for justice and redress to the president and council therein named who were not only entrusted with the general management of affairs but clothed also with judicial powers. Together they formed "a constant and settled court of record" for the administration of justice, full power being given to the president and any five of the council to hold plea in all cases whatsoever, both criminal and civil. Before entering upon their duties, however, they were to take an oath to execute their trusts faithfully and administer justice impartially. Moreover, they were to prescribe a due and orderly method of procedure for the trial of all cases and allow both sides to be heard before rendering judgment, but in laying down the rules of procedure and in passing judgment they were to be guided by the laws and statutes of England in so far at least as the state and condition of the inhabitants and the circumstances of the province would permit. The commission gave them no power to remit fines or forfeitures or to grant pardons, but in all criminal cases, where the punishment involved the loss of life or limb, wilful murder alone excepted, they were required to either grant the prisoner a reprieve, pending a final decision by the king in council or else send him to England, along with a true state of

his case. Furthermore, in all cases where the matter at stake was under the value of £50, the judgment and decree of the president and council were to be final, but where the amount involved exceeded that figure, appeal was to be allowed to the king in council, provided sufficient security was given by the appellant to pay the costs of the action in case the decision of the provincial court was affirmed.[1]

The next commission which was issued for the government of New Hampshire passed the seals in May, 1682. It was the one granted to Edward Cranfield and followed closely the lines of those usually issued to royal governors. It gave the executive far more extensive powers than were vested in the president under the previous commission. Furthermore, his position in the government was characterized by greater independence of action. He was empowered to appoint judges, justices of the peace, sheriffs and such other officers as might be found necessary for the maintenance of order and the proper enforcement of the laws, and to them he was to administer such oaths as he should find reasonable for the due performance of their duties and the clearing of the truth in judicial causes. Moreover, he could remit fines and forfeitures and pardon offenders for all crimes except treason and wilful murder, and even in these cases he could "upon extraordinary occasions" grant reprieves until the king's pleasure in the matter was known. The provision respecting those sentenced to the loss of life or limb was the same as that contained in the previous commission while the one relating to the matter of appeals differed only in having an additional clause, expressly stating that execution was not to be suspended, pending the decision upon the appeal. In this

[1] *New Hampshire Provincial Papers*, vol. i, 376, 377, 379; *Laws o New Hampshire*, vol. i, 3, 4, 5.

commission, also, the executive was authorized to execute martial law in time of invasion, insurrection or war. Unlike the previous commission nothing was said regarding the establishment of any one particular court but there was a provision relating to the courts which ran as follows, "and we do give and grant unto you [i. e. Cranfield] full power and authority to erect, constitute, and establish such and so many courts of judicature and public justice . . . as you and *they* shall think fit and necessary for the hearing and determining of all causes, as well criminal as civil . . " The wording of this clause gave rise to a controversy, for it did not appear clear from the context whether the word, *they*, referred to the council or to the general assembly. Besides the commission, some of the instructions also related to matters of justice but they were of a somewhat different nature. Thus, one directed the executive to take care in passing laws that all fines and forfeitures were made payable to the king, for the support of the government and for the informer, except in special cases. Another forbade him to resort to any arbitrary methods of procedure in determining cases at law, while still another authorized him to prepare and have enacted into law a bill, requiring jurors to possess such property qualifications as should be thought fit and proper.[1]

Sometime after Cranfield withdrew from the province, New Hampshire was included in the commission which was then being drafted for the government of Massachusetts, Maine and the Narragansett country. The type of government decided upon was similar in form to that introduced when Cutt was appointed president, but the powers conferred in the commission were more extensive. As in that case, the president and council formed "a constant and

[1] *Laws of New Hampshire*, vol. i, 52: *Provincial Papers*, vol. i, 433 to 444, 517, 556.

settled Court of Record" for the trial of all cases, but now it was expressly provided that such other courts might be established as should be found necessary.[1] As usual there was a provision allowing appeals to his Majesty, but the amount involved in the suit had to be at least £300 instead of £50, while nothing was said about suspending execution pending the appeal. The administration of the president and council, being provisional in character, simply paved the way for one that was to be more thoroughly identified with the interests of the Crown. The change occurred late the same year,[2] when Sir Edmund Andros arrived in New England with a new commission for the government of the territory, to which the Plymouth colony was now added. Later it was still further enlarged, embracing all the colonies as far south as the Delaware river. As in the previous commission, provision was made for "a constant and settled Court of Record" for the trial of all offenses. Its members consisted of the governor and council, who possessed the same powers as their immediate predecessors with respect to the erection of courts of justice. In the matter of appeals, it was provided that cases might be taken on a writ of error from the lower courts to the governor and council, provided the value at stake exceeded the sum of £100 sterling and sufficient security was given to pay the costs of the action in case the original sentence was affirmed. Furthermore, appeals were to be allowed to the king on the same conditions as were prescribed in the preceding commission, save that now notice of appeal had to be given within fourteen days after judgment was rendered. More-

[1] *Provincial Papers*, vol. i, 590; *Laws of New Hampshire*, vol. i, pp. 96 to 102. Joseph Dudley was appointed President. He and any seven councillors constituted a quorum. The new government went into operation in May, 1686.

[2] December, 1686.

over, it was expressly stated that execution was not to be suspended pending the king's decision upon the appeal. The commission likewise contained provisions, similar to those in Cranfield's commission, respecting the power of the executive to remit fines and forfeitures and pardon criminals, but the clause requiring him either to send to England those sentenced to loss of life or limb or else grant them a reprieve until the king's pleasure was known, was omitted. Like Cranfield, too, the governor had power to appoint judges, justices of the peace, sheriffs and other officers of the law and was authorized to administer to them such oaths as he considered necessary. He could also execute martial law whenever occasion required and could erect admiralty courts for the trial of maritime offenses. According to his instructions he was to see that the men whom he appointed to office were well affected towards the government and were persons of estate and ability and "not necessitous people or much in debt." He was also to take special care that their commissions were not made out for any definite or fixed period, but were without limitation as to time. Then, again, he was not to remove them without good and sufficient cause to be signified to the Board of Trade. Moreover, he was not to remit any fines or forfeitures above £10 without his Majesty's permission but he could suspend payment of the same, pending the arrival of the king's decision in the case. Furthermore, he was not to dispose of any escheats until the king's pleasure in the matter was signified to him. Finally, he was to see that no man's life, member, freehold or goods were taken away or harmed except "by established and known laws, not repugnant to but as near as conveniently may be agreeable to the laws of England." [1]

[1] *Provincial Papers*, vol. ii, 2–7; *Laws of New Hampshire*, vol. i, 149–162.

Upon the overthrow of the Andros government in April, 1689, New Hampshire was left without a government imposed by the authorities in England and this continued until 1692, when a new and separate commission was issued for the government of the New Hampshire settlements, no further attempt being made to consolidate the various colonies under one executive. Unlike the commissions issued to Cutt, Dudley and Andros, the one now granted to Governor Allen did not provide for the establishment of any particular court. In this respect it followed Cranfield's commission. It also contained the same provision as that, respecting the erection of courts of justice. Unlike Andros' commission, nothing was said about allowing appeals from the inferior courts to the governor and council but in the instructions there were these words on the subject,—" Inasmuch as it may not be fit that appeals be so frequently and for so small a value brought unto our governor and council, you [the governor] shall, therefore, with the advice of the council, propose a law to be passed wherein the method and limitation of appeals unto our governor and council may be settled and restricted in such manner as shall be found convenient and easy to our subjects in our said province." Appeal, however, from the governor and council to the general assembly was expressly forbidden. As in all the preceding commissions, provision was made for an appeal to the king and the conditions under which it might be made were the same as those laid down in Andros' commission, with this exception, that the amount involved was now set at £100 sterling instead of £300. Like the preceding governors, Allen possessed full power to appoint judges, justices of the peace, sheriffs and other officers, and he was commanded to exercise the same care when appointing persons to office. He was likewise directed to administer to them such oaths as were necessary and was for-

bidden to remove them without sufficient cause, which was to be signified both to the king and to the Board of Trade. He also enjoyed the same power of pardoning offenders as Andros enjoyed and was under the same limitations as to the remission of fines and forfeitures and the disposal of escheats as he was. Likewise he was commanded to see that no man's life, member, freehold or goods were taken away or harmed except by laws which were to be as consonant as possible to the laws of England. Like Andros, the governor could erect admiralty courts for the trial of all maritime offenses, but nothing was said respecting his right to execute martial law.[1] Then, too, there was an instruction, stipulating that no new courts should be established without his Majesty's special order, while another directed him to transmit home a full account of the establishment of the courts, with a statement of their powers and fees.

From this time on, the commissions underwent comparatively little change. Both in form and in substance they varied little. In fact they show remarkable uniformity. Changes, of course, occurred in the phraseology and a few of the powers therein conferred were thereby more clearly defined or limited. Moreover, some provisions were altered or dropped entirely and new ones added here and there. Thus, in the subject under review, the amount necessary in order to allow of an appeal to the governor and council was, in Bellomont's commission, fixed at £100, while, in order to carry the case to the king, the sum in question had to exceed £300. These also were the amounts designated in Dudley's commission. In the commissions which were issued later in the century, nothing was said respecting the question of appeals, the matter being fully covered by the instructions which the

[1] *Provincial Papers*, vol. ii, 41 to 69; *Laws of New Hampshire*, vol. i, 502–515.

various governors received. For instance, in those which Belcher received, it was stipulated that an appeal might be brought in civil cases to the governor and council provided the sum appealed for exceeded £50 and proper security was given. Furthermore, it was stated that no councillor who had passed upon the matter in a judicial capacity in the lower court should vote upon the case when it was being heard upon the appeal, though he might be present to give the reasons which caused him to decide as he did. From the governor and council appeal might be taken to the king in all cases exceeding £200, provided the appellant gave notice of an appeal within fourteen days and furnished proper security. When an appeal was taken, however, execution was to be suspended pending the king's decision in the matter unless good and sufficient security was given to make ample restitution of all the party appealing might gain in case the decree should be reversed. According to Governor Wentworth's instructions, a case might be carried on appeal to England either when the amount involved in the suit exceeded £500 sterling or when the fines imposed for misdemeanors exceeded £100. In the same instructions, also, it was stipulated that no forfeitures or escheats should be disposed of until a sheriff's jury had inquired into the value of them and no commissions to judicial officers should be issued except with the advice and consent of the council. Moreover the advice and consent of at least three of the council were also required before the governor could appoint any one judge or justice of the peace. Furthermore, the advice of the council was also required before the executive could declare martial law. As the commission gave him no power to execute martial law in time of peace, he was now directed in the instructions to recommend to the assembly the passage of a suitable act permitting him to declare it whenever occasion required. An-

other instruction provided that officers of the customs should not serve on juries or in the militia or as parochial officers, while still another not only empowered the governor to call a court of exchequer as often as was necessary but directed him to inform the home government whether the needs of the service required the establishment of a permanent court of that character. The most notable instance where the insertion of a few words in the commission made the meaning clear and unequivocal concerned the provision relating to the courts of justice. In that case, the insertion of the phrase, "with the advice and consent of the council," made the words "and they" refer unmistakably to the council. Another instance which may here be cited as a case where a provision was dropped from the commission concerned the power of the governor to erect admiralty courts. Such a provision was omitted, as the authorities in England themselves provided for the erection of such courts in America. As in the past, however, the governor continued to be vested with the powers of a vice-admiral and was commanded to see that the admiralty fees were the same as those charged in England.[1]

Having examined the commissions and instructions with the view of ascertaining the requirements of the Crown on the subject, it is now in order to find out what the legislature did in the matter.

By the first assembly that was summoned in New Hampshire, that of March, 1680, little attention was paid to some of the provisions of the royal commission. In fact a few were ignored altogether, while others were in effect either nullified or modified by some of the laws which were passed. The directions, given to the committee which

[1] *Provincial Papers*, vol. ii, 64 to 70, 307, 369; vol. vi, 911 *et seq.*; vol. xviii, 17 to 32, 532 to 540; *Laws of New Hampshire*, edition 1771, p. 5 *et seq.*

was appointed to put in proper legal form what the two houses had agreed upon in substance, were to formulate the laws "as near as may be according to the laws of England" and "to suit with the constitution of this province." In due time the committee laid before the assembly the general body of laws, which as slightly amended and approved by the latter, is usually referred to as the Cutt Code. Upon comparison it will be found that they contain much that is characteristic of the legislation of the Puritan commonwealths. Considerable was borrowed from Massachusetts, but the entire criminal code "with the exception of a few sections and some slight verbal differences" were taken from the laws of New Plymouth. Nearly one half relate to capital and criminal offenses. Of the latter some twenty-five are enumerated and their punishment defined. Naturally this varied according to the nature and degree of the offence. Sometimes, too, it depended also upon the Court which could exercise in some cases a certain amount of discretion in determining the particular punishment. Branding the prisoner with a hot iron, or committing him to the stocks, or whipping him, or inflicting upon him some other form of corporal punishment, or fining him or simply legally admonishing him—such were the punishments prescribed. Of the greater offences eleven were made punishable with death and five others with death or some other "grievous" punishment, while a third conviction for burglary also meant death or some other "grievous" punishment, so that there were in reality seventeen offences for which the death penalty might be imposed.[1] The balance

[1] *Laws of New Hampshire*, vol. i, 112 *et seq.*, 748 *et seq.*; *New Hampshire Historical Society Proceedings*, 1876-84, p. 274 *et seq.*; *Proceedings of American Antiquarian Society*, 1876, p. 92 *et seq.*; *New Hampshire State Papers*, vol. xix, 671; Washburn, *Judicial History of Massachusetts*, *passim*. The offenses for which death was the only

of the code comprised forty-five general laws. They dealt with many matters of more or less importance. Thus, there were laws covering the questions of bail, non-suit, default, summons and attachment, while others had to do with the establishment of courts of justice, the rights of plaintiff and defendant, the duties of certain officials and the method of acknowledging judgment, selecting jurymen and administering town affairs. Moreover, to provide for any contingency that might arise through want of a law in the code to cover the case, it was stipulated that the laws under which the people had been governed in the past should be a rule to them in all judicial proceedings in so far as they suited with their constitution and were not repugnant to the laws of England. Furthermore, all decrees and judgments rendered by the courts during the period when the New Hampshire settlements were under the control of Massachusetts were declared good and valid.[1]

penalty were idolatry, blasphemy, treason, wilful murder, manslaughter, murder "through guile," witchcraft, beastiality, buggery, false witness for the purpose of taking away a man's life and cursing of parents by a son. Those for which the penalty was death or "other grievous punishment" were man-stealing, public rebellion, rebellion by a son against his parents, rape and arson, and a third conviction for burglary. The other offenses, for which a penalty was prescribed, were adultery, fornication, ante-nuptial defilement after contract and before marriage, burglary, robbery, larceny of ships, etc., attempts at such larceny, larceny of money and other chattels, petty larceny, profanity, habitual profanity, profaning the Lord's day, contempt of God's word or His ministers, forcible detainer of possession, conspiracy against the province and defamation of its magistrates, forgery of deeds, defacing and embezzling public records, attempt to corrupt officers, lying, burning and breaking down fences, removing or defacing landmarks, unlawful gambling of any kind, drunkenness and firing of woods at certain times.

[1] Orders similar in tenor to these provisions were issued later both by President Dudley and Governor Andros, while the latter's instructions distinctly stated that pre-existing laws should continue in force until others were passed to replace them.

During the time that the laws were before the assembly for correction and amendment, Richard Chamberlain, the secretary of the province and a stanch supporter of the prerogative, made some remarks upon them. In the first place he took exception to the whole system in general as being collected for the most part out of the Massachusetts laws. "Surely," said he, "it would not stand well with the mind and pleasure of his Majesty that we here should cast off obedience to their jurisdiction and yet voluntarily submit to and yoke ourselves so inseparably to their laws." Furthermore, he declared that the laws were unnecessary as the king had sent over "a great volume of laws copiously and accurately done to their hands." Finally, he objected to many of them on the ground that they were repugnant to or inconsistent with the English statutes and the provisions of the royal commission. But, except in some minor particulars his objections were overruled.[1]

With the way in which the president and council administered the government the authorities in England were highly displeased, while the manner in which some of the provisions of the commission were violated created great dissatisfaction and called forth words of condemnation. In December, 1681, the Lords of Trade expressed themselves as highly displeased both "with the style and matter" of the laws sent over and said they would offer them all to the king for rejection. Moreover, they declared that the laws of England should be in force in New Hampshire, except where any particular circumstance of the place required any alteration, which was to be provided for by particular and subsidiary laws. Furthermore, they agreed to report that the proceedings of the government had been so irregular that it would be necessary to send some one over to settle

[1] *New Hampshire State Papers*, vol. xvii, 544–6. *Cf.* 541, 551.

the country under such commission and instructions as were usually given to royal governors. And, again, the following month, they declared that most of the public acts and orders were "so unequal, incongruous and absurd and the methods whereby the council and assembly had proceeded in the establishment of the same so disagreeable and repugnant to the powers and directions" of the commission, that they could not hope for such a settlement and regulation of officers in the province as their dependence upon the king and the preservation of peace required unless some fit and able person, of whose fidelity and sufficiency his Majesty was well assured, was appointed to settle the place under such a form of government and such laws as were necessary for the regulation and improvement of the same. As a result the laws were disallowed and a new commission, similar to those usually granted to royal governors, was issued for the government of the country.[1]

Soon after Edward Cranfield, whom the king then appointed executive head of the province, arrived in Portsmouth, a controversy arose as to whether the assembly had a voice in the establishment of the courts. As Cranfield contended that it had no voice in the matter, he would not allow the lower house to pass any laws, providing for the establishment of courts of justice. The representatives, therefore, were compelled to confine their attention, so far as the administration of justice was concerned, to passing, in conjunction with the governor and council, laws that enumerated the various crimes and prescribed the respective penalties, that defined the qualifications of jurors and regulated the taking of bail, the issue of writs, summons and attachments and other matters of detail.

[1] *Laws of New Hampshire*, vol. i, 45, 787; *Calender of State Papers*, 1681–5, § 467.

The body of laws which the assembly passed and the executive finally approved was by no means so extensive or comprehensive as the Cutt Code. In fact the whole covers only a small portion of the ground occupied by the latter and in print takes up less than one-fourth as many pages. Not only was there a great reduction in the number of capital crimes mentioned, but the punishment prescribed for the lesser offences was also less severe. Moreover, not a single capital offense was made punishable with death upon the first conviction and only two upon the second. Furthermore, not half as many offences are mentioned in it as in the Cutt code. The provisions, relating to bail, non-suit, default, summons and attachment are the same as in the latter. Unlike that, however, it provided, as in England, for the selection of jurymen by the sheriff instead of by the freemen of the town, and it defined the jurisdiction of justices of the peace in civil cases. Except in the particulars above referred to there was striking similarity between the two sets of laws.[1] Although these laws were regularly approved by Cranfield, the latter wrote home, requesting that they be disallowed as it might, he thought, "be the means of having better made for the future." "In the meantime," he continued, "I govern them by the laws of England." On account of the strained relations which existed between the executive and the assembly during the balance of Cranfield's administration, other attempts at legislation

[1] *Proceedings of New Hampshire Historical Society*, 1876–84, p. 289 *et seq.* The Cranfield code recognizes as crimes only adultery, fornication, ante-nuptial defilement after contract and before marriage, burglary, robbery, larceny of ships, etc., attempts at such larceny, larceny of money and other chattels, profanity, lying, drunkenness, profaning the Lord's day, contempt of God's word and His ministers, burning fences and destroying landmarks. All of these are treated in the Cutt code. *Laws of New Hampshire*, vol. i, 58 et seq., 791; *Proceedings of American Antiquarian Society*, 1876, p. 92 *et seq.*

were rendered practically impossible, and, as a matter of fact, during that time only one act was passed and that was passed solely because the home government urgently desired it.

During the administrations of President Dudley and Governor Andros there were no assemblies. Consequently the people had no voice either in the making of the laws or in the establishment of courts of justice. In the commission, however, which was granted to Governor Allen in 1692, as well as in those which were issued later, the calling of an assembly was authorized. As a result the inhabitants, through their legally elected delegates, again took a prominent part not only in making laws but in providing for the erection and regulation of the courts.

Although from the instructions which Governor Andros received it is evident that the Crown intended that all preexisting colonial laws, not repugnant to the English statutes, should be regarded as possessing a continuing validity until formally repealed by the king in council or legally displaced by others, it appears from the answer which the council gave Lieutenant Governor Usher in 1692, when he asked them what laws were then to be regarded as still in force in the province, that that body did not consider the matter in the same light. For, when the question was put to them, they replied that, considering the many revolutions and changes in this province for several years past, they were of the opinion that there were no laws nor standing revenue in the province when his honor arrived there, so that what is necessary for the king's service and the support of the government are to be enacted by the legislature. And, it is a significant fact, that, when Governor Dudley was requested by the home government in 1702 to send over copies of all the laws then in force, he forwarded none that were enacted prior to 1692. The laws that were passed by the first as-

sembly which Usher summoned did not, however, constitute a code nor were they intended to.[1] In fact, no assembly ever adopted a complete code of laws. As a rule laws were passed only as needed. Moreover, such a code was not called for by the authorities in England, for the English laws were to be in force in the province in so far as the state and condition of the inhabitants and the circumstances of the country permitted. Naturally, many of the English laws were unsuited to a people living in a new country while others were quite inapplicable. Physical, political, social and industrial conditions on this side of the Atlantic were different from what they were in England. Moreover, the laws by which the people had been governed during the period of nearly forty years that the New Hampshire settlements were under the jurisdiction of Massachusetts, had never been officially transmitted to the home government for inspection, for the latter did not then require that colony to send its laws to England for confirmation or repeal. After having lived, therefore, for so many years under laws, many of which were repugnant to or inconsistent with the English statutes, it is not surprising that a considerable part of what the New Hampshire legislature later enacted was at least based upon the laws in force prior to 1679 and that much of the common and unwritten law of that period continued

[1] *Laws of N. H.*, vol. i, 524 *et seq.* The acts which the assembly passed were not comprehensive in character but rather fragmentary and few in number. In fact there were only eleven of them. In general they were framed to meet the particular emergencies then existing. No crimes were defined. The work of all the assemblies which were summoned during Usher's administration is much the same in character. This may be said of most of the assemblies summoned during the provincial period. Gradually what was wanted to round out the province laws was supplied and something approximating a code was the result. For the crimes which were later embraced in the province laws, see *Province Laws*, edition 1761, p. 11 *et seq.*, 37, 43 *et seq.*, 48, *passim*.

to be recognized both by the courts and by the people throughout the entire provincial period. In this connection, too, it must not be forgotten that the province joined Massachusetts on the South, that the inhabitants had important business and social relations with the people of that colony and that for over forty years during the provincial period the governor of Massachusetts was also the governor of New Hampshire. It was quite natural, also, that complicated and cumbersome English laws should be replaced by others which were simpler and more direct. The laws relating to inheritances, the ownership and occupation of real estate and the transfer of rights in the same were very different from and simpler than those in England. Instead of the intricate and artificial system of English conveyancing there was a simple, yet comprehensive system. Instead of the doctrine of primogeniture in cases of descent, there was the doctrine of equality, except that the oldest son received a double portion as under the Jewish law. Real estate was made liable for debts, and all estates were allodial. Contrary to the English rule, also, cases at law and equity were heard by the same court. Moreover, as marriage was regarded as a civil, contractual relation it was regulated and sanctioned by the civil authority, and, as divorce was regarded as a breach of that contract, the civil authority had a right to grant redress. Acts granting divorce were passed by the legislature. Then, again, unlike the custom in England, ministers of the gospel were elected by the people of the towns. Furthermore, the form of taking an oath was not, as in England, by swearing upon the Bible but by holding up the hand. Although other cases might easily be cited, those already given indicate in some measure the extent of the differences existing in the customs and laws of the mother country and her colony.

To a very great degree the latter simply borrowed from Massachusetts.

Although, under the law of 1693, it was made the duty of the secretary of the province to send to the various towns written copies of the laws as they were from time to time passed by the legislature, the need of having printed copies was in time sorely felt, for many people did not know exactly what the law was on this or that subject and it was difficult for most of them to find out what they sought. To remedy this committees were appointed from time to time by the legislature to supervise and collect the laws in a body so that they could be printed. Directions also were given to remedy any defects in the laws and draft new ones where they found such necessary. As a result various collections of province laws were made and some were published but no complete and full collection was ever made. For some reason all the permanent laws were not included while none of them contained many of the temporary laws.

Although governors were directed to have all the province laws as passed sent to England, there is evidence to show that this was not always done. Moreover, it does not appear that they were always acted upon by the authorities there nor did the latter apparently consider it necessary to ascertain for themselves whether the repeal of acts formerly disallowed by the Crown was officially published in the province but it is clear that some acts regularly repealed by the king were continued in full force and remained on the statute books until after the Revolution.

Although the commission which was granted to President Cutt in 1679 did not contain a provision, giving either the president and council or the assembly, power to constitute and establish courts of justice, still it might possibly be inferred from the recommendations which the president was authorized to make to the assembly that such power was

implied, for, in the commission the president was directed to recommend the passage of such acts and ordinances as might most contribute to establish the people in obedience to the royal authority and tend to their own preservation in peace and good government. However that may be, it is certain that the deputies construed the commission as giving them a voice in the matter and to this the president and council offered no objection.[1] By the terms of the law which was then passed the highest court in the province was to consist of the president and council and the members of the lower house, and was to meet regularly on the first Tuesday in March, the day set apart for the annual meeting of the general assembly for purposes of general legislation. In other words it was simply the entire legislature acting in a judicial capacity. It was not intended as a court for the trial of cases in the first instance, but was designed to hear and determine such actions as were brought up on appeal from the inferior court. The following year, the date for the regular meeting of the court was changed to the first Tuesday in September. Besides this tribunal the act also provided for an inferior court, to consist of the president and any six of the council, who were empowered to hear and determine all cases and authorized to hold three sessions a year, one in Dover on the first Tuesday in June, one in Hampton on the first Tuesday in September and one in Portsmouth on the first Tuesday in December.[2] From their decision one appeal was allowed to the highest court,

[1] *New Hampshire Provincial Papers*, vol. i, 379. Note also the language of the order of February 16, 1680, in *Laws of New Hampshire*, vol. i, p. 11.

[2] *Laws of New Hampshire*, vol. i, 25, 38, 786; *Provincial Papers*, vol. i, 387, 392, 395 *et seq*. The commission provided that the president and any five councillors should constitute a court for the trial of all cases.

provided the appellant gave bond to prosecute the appeal according to law. As so many sessions were attended in so small a province with considerable expense, the number was reduced the next year to two. These were to be held on the first Tuesdays of every June and December, it being stipulated that the court should sit in Dover the following June, in Hampton the succeeding December, in Portsmouth the next June and so on in rotation. For the more speedy determination of petty cases it was provided that any member of the council might determine suits where the sentence to be imposed did not exceed a fine of forty shillings or the penalty of being put in the stocks or whipped not more than ten stripes. In all such cases, however, an appeal could be taken to the next court for the trial of actions. Furthermore, the law provided that any one might have an action reviewed in any court, but, if he still persisted in a course of law after being twice cast upon a review and was again cast, his case was then to be judged vexatious and he compelled to pay double costs and such fine as the court should determine, not exceeding, however, five pounds. Moreover, except for capital offenses and contempt in open court, there was to be no imprisonment before sentence, provided sufficient security, bail or mainprize was given. As in Massachusetts, jurymen were to be chosen by the freemen of the various towns. Although the commission required that appeals should be allowed to the king, the law was silent on that point. In truth, the new government was strongly averse to the principle of allowing appeals to be made to any authority outside the province, and in an address sent to the king in June, 1680, the president and council "humbly suggested whether the allowance of appeals, mentioned in the commission, may not prove a great occasion, by means of malignant spirits for the obstructing

of justice among us," and begged that a favorable construction be given to what they suggested.[1]

Soon after Cranfield's arrival in the province in 1682, a controversy arose over the question of establishing courts of justice. Cranfield, on the one hand, claimed that the power to erect courts of justice was vested in him, while the representatives, on the other hand, maintained that they also had a voice in the matter, and, as proof of their contention, they referred to that clause of the commission which ran as follows: "And we do give and grant unto you [Cranfield] full power and authority to erect, constitute and establish such and so many courts of judicature and public justice . . . as you *and they* shall think fit and necessary . . . " In this clause they contended that the words *and they* referred to the general assembly while Cranfield declared that they were put in by mistake on the part of the clerk who engrossed the commission. As found in the commission, it is impossible to say with any degree of certainty to what the word *they* refers. It might be made to apply equally as well to the councilors as to the representatives, but when we take into consideration the fact that the establishment of courts of justice was a prerogative of the Crown and compare the clause with those found in some of the later commissions, it seems clear that the words in question were intended to refer to the council and meant that the governor was to consult with the latter on the subject and secure its approval before erecting courts, for in the commissions referred to the clause is as follows: "And we do give and grant unto you [the governor] full power and authority, *with the advice and consent of the council,* to erect, constitute and establish such and so many courts of judicature and public justice . . . as you *and they* shall

[1] *Provincial Papers*, vol. i, 387, 392, 395, 402, 406, 412; *Laws of New Hampshire*, vol. i, 23, 25, 38, 786 *passim*.

think fit and necessary . . . " It will thus be observed that with the exception of the words " with the advice and consent of the council," the clause is worded exactly the same as the one found in Cranfield's commission. The insertion of these words, however, renders the meaning clear and unequivocal. The lieutenant governor's contention, therefore, that the words in question were put in by mistake appears to be erroneous, for it seems clear that the ambiguity arose from the omission, perhaps through oversight on the part of the clerk, of the words which appear in the later commissions. He seems to have been right, however, in maintaining that the assembly had no power to establish courts of justice. Confident at the time that the power was vested in him, he refused to permit the lower house to pass any laws establishing the courts and proceeded himself to erect such as were necessary. Accordingly the courts were fashioned after the English courts and the method of selecting the jury was the same as that in vogue in England. Many irregularities, however, were practised and it appears that the courts were run more in Cranfield's interests than in those of the people. Indeed, his arbitrary conduct with regard to the administration of justice was the cause of much of the uneasiness and unrest which characterized his administration. Not only were the judges and other officers of the law threatened or removed, if they did not do his bidding, but the fees were raised and the cost of actions unduly increased. Furthermore, it was claimed that cases were tried before packed juries. It was also a matter of complaint that persons who offended the governor were imprisoned or compelled to give heavy bail, even when no crime was charged against them and that the court charges were exacted in money, so that those who could not pay in specie were imprisoned, even though they tendered goods in lieu thereof. Moreover, people com-

plained that the method of procedure in the courts was irregular and arbitrary and that judges and jurors were sometimes interested in the issue of the cases brought before them.

At last, these and other matters were presented against Cranfield in certain articles of complaint which were placed before the king by Nathaniel Weare, who had been privately sent over by the inhabitants to seek relief. When the lieutenant governor heard of this and learned from the petition that he was charged with engrossing "the whole power of erecting courts . . . exclusive of the general assembly . . . ," he issued an order, suspending executions in both Mason's concerns and his own until the question as to the legality of the courts which he had erected was finally determined by the authorities in England. When the Lords of Trade, however, to whom the articles of complaint had been referred, presented their report to the king, nothing was said respecting the legality of the courts of justice, so that it is to be assumed that they construed the commission as vesting in the governor the power to erect them. The courts, thus established, therefore, continued to be the regular courts of justice until June, 1686.[1]

On the tenth of that month, President Dudley, by virtue of the terms of his commission which vested in himself and the council full power and authority to erect such county and other inferior courts as they should think fit and necessary, published an order providing for the establishment of the courts. To the end that justice might be equally distributed throughout the territory designated in the commission, it was provided that each county or province should have a court, to be held and kept as a court of pleas and general sessions of the peace. In New Hampshire such a

[1] *Provincial Papers*, vol. i, 493, 536, 556, 437, 564, 517, 547, 569, 2,57 593; vol. vi, 911.

court was to hold two sessions a year, one at Great Island and one at Portsmouth, the first session to begin on the first Tuesday in October and the second on the first Tuesday in April. As justices, any member of the council residing in the province and such others of the council as should "think fit to be present" were to officiate, along with such justices of the peace as might be commissioned for that particular purpose. For the transaction of business, three justices, one of whom had to be a member of the council, were necessary. In respect to jurisdiction, the court had full power and authority to hear and determine all civil cases and such criminal actions as did not extend to life and limb. From the judgment rendered, appeal lay in all civil cases to the president and council who constituted a "stated superior court of grand assize and jail delivery" for the entire territory. They were to hold three sessions a year in Boston, on the first Tuesdays of November, March and July. Before them were to be tried and finally issued all cases of appeal, all capital cases, all pleas of the Crown and all such matters as were "above the cognizance of inferior courts and proper thereto to be determined, saving always unto all persons liberty of appeal unto his Majesty in council as in and by his Majesty's royal commission is granted, limited and appointed." For the more ready dispatch of small causes, the order provided that the president or any member of the council or any two justices together should have power to dispose of all matters where the damage, including costs, did not exceed forty shillings, but in all such cases an appeal might be taken to the next county court but no higher.[1]

The following year, only a few months after Dudley was superseded in the government by Sir Edmund Andros, the

[1] *Provincial Papers*, vol. i, 593, 594, 595; *Laws of New Hampshire*, vol. i, 96, 99.

judiciary was again reorganized. By virtue of the legislative powers vested in the governor and council by the new commission, a law was passed, providing that the justices of the peace of each county or province should hold quarterly Courts of Sessions for the purpose of hearing and determining all matters relating to the conservation of the peace and the punishment of offenders and whatever else was by them cognizable according to law. For the province of New Hampshire, such a court was to be held in the town of Portsmouth on the first Tuesdays in March, June, September and December. At the same time and in the same town, a judge, assisted by two or more of the justices of the province, was to hold an Inferior Court of Common Pleas to dispose of all cases up to the value, including costs, of ten pounds, except such as being below forty shillings, were cognizable before the justices of the peace, and such others as involved any freehold. From the judgment rendered, an appeal could be taken on a writ of error to the superior court, provided it was made within ten days after judgment was given. As for the Superior Court, that was to have cognizance of all manner of pleas, civil, criminal and mixed, with power to give judgment in the same and award execution in as full and ample manner "to all intents and purposes" as the English courts of King's Bench, Common Pleas and Exchequer. For the convenience of the inhabitants, the court was to make a regular circuit of the entire territory twice a year, sitting in the various towns designated in the act upon the days therein appointed. For the judicial district, embracing New Hampshire and the western part of Maine, the sessions were to begin at Portsmouth on the Monday following the first Wednesday in September and March and could, if necessary, be continued for three days which was also the limit fixed for the sessions of the Inferior Court and the Court of Quarter Sessions. Where

issues of fact arose in any of these courts, it was provided that such cases should be tried before a jury of twelve men of the vicinage. Furthermore, the law expressly stipulated that the forms of procedure used and the judgments rendered should be as consonant and agreeable to the laws of England as the present state of the inhabitants and the place permitted. In cases of error, appeal lay from the Superior Court to the governor and council in all civil cases, provided as prescribed in the commission, the value appealed for exceeded the sum of one hundred pounds sterling and sufficient security was given to defray the costs of the action in case the judgment of the trial court was affirmed. Finally, from the decision rendered by the governor and council, who acted as a court of appeals, no appeal was to be allowed unless the amount involved exceeded three hundred pounds sterling, in which case the matter could be carried to the king in council provided the conditions laid down in the commission were complied with. Besides these courts, the law provided also for a Court of Chancery, to consist of the governor, or his appointee, and at least five of the council who were to hear and determine all matters of equity in as full and ample a manner as the High Court of Chancery in England. From their decision appeal was allowed to the king when the matter in difference exceeded three hundred pounds sterling. For the disposal of all cases, not exceeding forty shillings, excepting such only as involved title to land, provision was made that they should be determined by any of the justices of the peace residing in the district, who were to keep a fair record of the proceedings and grant on demand trials by jury in all cases involving matters of fact, provided the costs of the same were defrayed by the party desiring it.[1]

[1] *Laws of New Hampshire*, vol. i, 190 *et seq.*, 260, 372, 476. The law was passed in March, 1686–7.

Upon the overthrow of the Andros régime in the spring of 1689 the whole system of government which had been built up under it fell to pieces. As a result, New Hampshire was left without a government imposed by any external authority. As there were no longer any provincial courts, each town was left to administer justice as it saw fit. When, at last, the inhabitants were practically forced by circumstances to seek a union with Massachusetts, that government admitted them and confirmed the list of justices of the peace which had been submitted by the inhabitants of the several towns. Although New Hampshire was then virtually a part of Massachusetts and enjoyed the benefit of the latter's laws, nevertheless, owing to the unsettled state of affairs, due to the trouble with the Indians, the legal settlement of the courts was prevented, although a temporary arrangement was at last effected for the convenience of the inhabitants.

In the summer of 1692 the union was dissolved in consequence of the publication of a new royal commission which had been issued for the government of the New Hampshire towns. This contained the same provision respecting the establishment of courts of justice as was found in Cranfield's commission. The words, therefore, were susceptible of the same interpretation, but when the assembly convened and proceeded to draft a law for the establishment of the courts, Usher, the lieutenant governor, does not appear to have asserted for himself, as Cranfield did, the right to erect them, nor is there evidence to show that there was any controversy between the different branches of the legislature as to the interpretation of the words "and they." The result was that the courts were legally established by an act of the entire legislature and not by a mere order of the governor and council. And from this time on, whenever changes were made in the organization and regulation of

the courts, the representatives always had a voice in the matter, and for the greater part of the provincial period their right to do so was not seriously questioned. According to the law which the assembly passed, the disposal of very small cases was entrusted to the justices of the peace, who, in the towns in which they resided, were given full power to determine causes, including actions for debt and trespass, up to the value of forty shillings, all of which were to be heard and finally determined by the justices without a jury, unless either of the parties concerned demanded one, in which case the same was to be granted but at the expense of the person desiring it. As under Andros, there was to be a quarterly Court of Sessions for the trial of criminal offenses. This was to meet at the same place and upon the same day as were appointed during that administration, but the sessions were to continue for only two days instead of three as in that instance. Furthermore, in the same town there were to be held every year by a judge and three assistants, four Courts of Common Pleas, the sessions of which were to begin on the day following the termination of the Courts of Quarter Sessions and continue, if necessary, for three full days. With respect to jurisdiction, it was provided that the justices should have full power and authority to determine all cases, triable at the common law, up to the value of twenty pounds sterling, excepting only such actions as involved titles to land. From the judgment rendered appeal lay to the Superior Court which was to consist of at least four justices, of whom two with the chief justice formed a quorum. This court was to hold two sessions a year in the town of Portsmouth, beginning on the last Tuesday in April and October and continuing in each instance for a period of not more than six days. It had the same jurisdiction as the Superior Court had under Andros. Now the law expressly stated that actions might be commenced

in it or removed to it from the lower courts, and also any judgment, information or indictment brought before it from those courts either by warrant, writ of error or certiorari. Moreover, it could correct errors of judgment, if such were found. From this court an appeal might be taken to the governor and council, if the value appealed for exceeded fifty pounds. This law, also, provided for a Court of Chancery, to consist of the governor, or his appointee, and such of the council as he should select. This had the same power and jurisdiction as the Chancery Court had during the administration of Governor Andros. From the governor and council appeal might be made to the king in all civil cases where the amount involved exceeded one hundred pounds, as prescribed in the commission.[1]

On account of the war with the Indians the legislature then deemed it best to pass a temporary act, providing that no royal action nor any writ of ejectment for the possession of or title to land nor any personal suit where the value sued for exceeded twenty pounds should be prosecuted in the courts by any person during the continuance of the struggle or within two years after the close thereof.[2]

Except for a few slight alterations, the law providing for the establishment of the courts remained unchanged until Lord Bellomont arrived in the province in 1699.[3] Then,

[1] *Laws of New Hampshire*, vol. i, 514 *et seq.*

[2] *Ibid.*, vol. i, 535. The act was passed in October, 1692.

[3] *Ibid.*, vol. i, 513, 570, 602; *Provincial Papers*, vol. iii, 16, 85, 218; vol. xix, 702, 703, 704, 705. As certain alterations in the time of holding the courts were found desirable, the days appointed for the sessions of the Superior Court were in May, 1694, changed by legislative act from the last to the first Tuesday in April and October, while, in April, 1698, in consequence of the inconvenience and expense occasioned by having no particular day of the week set apart for the opening of the Court of Common Pleas, the legislature designated the first Wednesday after the Quarter Sessions began as the day on which the Court of Common Pleas should sit, irrespective of whether the Quarter Sessions had then finished its business or not.

in consequence of a petition which he received against the judges of the Superior Court, he issued a proclamation, according to which only the justices of the peace and the constables were continued in office. This terminated the commissions of the other justices. Before, however, others were appointed, the courts were remodelled by virtue of a law which received the governor's approval on the 17th of August. According to the new law the Court of Quarter Sessions, the Court of Common Pleas and the Superior Court were to hold as many sessions in Portsmouth as under the old law, and, in the main, the jurisdiction and constitution of the courts remained the same except in such particulars as are noted below. No provision, however, was made for a distinct and separate Court of Chancery for the trial of cases in equity. As before, justices of the peace were vested with power to determine all cases up to the value of forty shillings, excepting such as involved titles to land, but the party aggrieved now had the privilege, on giving proper security, of appealing in civil cases from the judgment to the Court of Common Pleas. Henceforth the latter was to meet one day later than had hitherto been the custom and it could apparently continue its sessions until all the cases before it were disposed of. The same, too, may be said respecting the number of days the Superior Court might remain in session. As for the Court of Quarter Sessions, that was to consist of the justices of the peace or so many of them as were designated in the commission of the peace to form a quorum, while its sessions were to begin upon the same day and continue for the same length of time as heretofore. Although the appellate jurisdiction of the Superior Court remained the same, its original jurisdiction in civil suits was by this act confined to cases, the value of which exceeded the sum of twenty pounds, actions involving titles to land alone excepted. Furthermore, it was to meet in the

future on the second Tuesday of every August and February. Under the new law, too, the justices of both the Inferior and Superior courts were vested with certain powers of chancery, being empowered to moderate the rigor of the law in equity cases and proceed, in disposing of them, upon rules of equity and good conscience. With regard to the question of appeals, the provisions of the law were, that an appeal might be taken in civil cases from the judgment of the justices of the peace to the Court of Common Pleas and from the latter cases might be brought to the Superior Court, from which an appeal lay to the governor and council, provided the matter in difference exceeded the sum of one hundred pounds, while in cases involving more than three hundred pounds, the aggrieved party was given the privilege of having the matter reviewed once in the Superior Court, and if not satisfied then with the judgment rendered in either case he could carry it on appeal to the king, provided the conditions laid down in the commission were fulfilled. In all cases, however, proper security was to be given to prosecute the appeal with effect and pay all charges in case the original sentence was affirmed. Furthermore persons entering an appeal were now obliged to file a declaration of the same with the clerk of the court appealed from, briefly stating the errors in judgment, at least fifteen days before the date fixed for the opening session of the court appealed to. If, however, the appeal was from a decision of a justice of the peace, the declaration had to be filed with that justice.

In 1701 this law was virtually amended in certain particulars by the passage of an act for the regulation of trials in civil cases. In accordance with its provisions, all actions triable at the common law above forty shillings, including suits involving title to land, were to be brought first to the Inferior Court of Common Pleas, unless the actions per-

tained to the Crown, in which case they might be tried either in that court or in the Superior Court. Furthermore, the declaration, giving the reasons for appealing from a judgment of the Inferior Court might be filed one day later than was allowed under the act of 1699. Then, too, it was expressly stated that new pleas and evidence could be presented when the matter was being heard upon the appeal. Moreover, if either party felt aggrieved at the judgment given in either court, he was granted the privilege of having the suit reviewed once in each and could in each instance present additional pleas or evidence to strengthen his case, but no action of review was to be brought after the lapse of three years except in the cases of minors or persons who were either mentally irresponsible or confined in captivity beyond the bounds of the province. In no instance, however, was execution to be suspended by reason of any process of review. Finally, the act designated the second Tuesdays of May and November as the days on which the governor and council were to sit as a Court of Appeals.[1]

Although this act, as well as the one passed in 1699, was regularly repealed by her Majesty in Council in November, 1706, still there is no conclusive evidence to show that the province authorities were ever officially notified of the fact and it is clear from the provincial records that its provisions were continued, during the balance of the colonial period, in full force, except in so far as certain of them were virtually amended or repealed by other acts. Furthermore, they repeatedly reappeared among the perpetual acts in all of the official publications of the province laws and remained upon the statute books until finally repealed by the state legislature in June, 1792. The reason assigned by the Board of Trade in recommending the repeal of the act of 1699 was

[1] *Laws of New Hampshire*, vol. i, 702 *et seq.*

that it trenched upon the prerogative in that, although it allowed an appeal to her Majesty where the value in demand was above three hundred pounds, yet it prevented appeals if for less, which it ought to be in the power of the Crown to admit in such cases as it might think proper. And, it recommended the repeal of the act of 1701 because the measure encroached upon the prerogative, in that it contained no provision, providing for appeals to the queen in council.[1]

In an act passed in 1718 it was provided that petty criminal cases which had been tried before one or more justices of the peace out of sessions might be taken on appeal to the next Quarter Court, provided sufficient security, not exceeding five pounds, was given for the appearance of the person convicted and as a guarantee that the appeal would be prosecuted with effect. At the same time, provision was made for allowing appeals to be made in original cases from the Quarter Sessions to the Court of Assize and General Jail Delivery where the matter was to be finally determined, but, in order to be effective, such an appeal had to be made at the time sentence was pronounced, while within two hours afterwards the appellant was obliged to enter into recognizance with two sureties for his personal appearance at the court appealed to. Furthermore, he was to file with the clerk of the court the reasons for his appeal at least seven days before the court sat and produce also attested copies of all the evidence, besides paying the requisite fees for entering the appeal and paying the jurors. In 1745, the provisions of the law, which required persons appealing from

[1] *Laws of New Hampshire*, vol. i, 661, 702, 862. Compare the act of 1699 with the Massachusetts act of the same year. Washburn, *Judicial History of Massachusetts*.

a judgment of the Inferior Court to file a declaration of appeal, were repealed.[1]

From the records it appears that, when a court for any reason did not hold its sessions at the time appointed by law the cases, then on the calendar, were discontinued. Naturally this at times caused great inconvenience and damage to the parties concerned as special acts or votes of the legislature were reqiured in order to have the suits revived. Then, again, if any party to a suit died while the matter was still pending before the courts, the suit was thereby abated. To remedy this a law was passed in 1765 which provided that the death of either party should not abate the writ if the cause of action still survived.[2] Furthermore, it was a matter of complaint that the justices of the Quarter Court could not adjourn that court beyond the time designated by law. As the province increased in population and the number of suits multiplied, the lack of power to adjourn the court from time to time as occasion required caused considerable inconvenience, expense and injustice. Consequently a law was enacted in 1752 vesting the justices with the necessary power. Occasionally, also, when the public interests demanded it, the legislature itself directed that the courts should be adjourned to some other day.

[1] *Laws of New Hampshire*, 1696–1725, p. 70; *Provincial Papers*, vol. v, 729. Certain changes respecting the time of holding the courts having been found desirable, laws were passed, authorizing such alterations to be made. Thus, the Court of Appeals was to hold its autumn session one month earlier than heretofore. Moreover, the time for the sessions of the Superior Court was changed first to the first Tuesdays in August and February, and later to the third Tuesday of May and the second Tuesday of November. Furthermore, the time appointed for the Inferior Court was set for the first Tuesdays of March, June, September and December, while the Court of General Sessions was to meet on the second Tuesdays of the four months just mentioned. *Laws of N. H.*, edition 1761, pp. 3, 4, 192.

[2] *Ibid.*, edition 1771, p. 196.

In 1769 an act was passed dividing the province into five counties, which were named Rockingham, Hillsborough, Cheshire, Grafton and Strafford.[1] Of these the first three were active counties and enjoyed full county privileges, while the other two were to be regarded as a part of the county of Rockingham until such time as the governor and council should declare them fit to enjoy full county privileges. Regarding the establishment of the courts, the act provided that there should be held in each of the active counties a Superior Court, an Inferior Court of Common Pleas and a Court of General Sessions, each and every one of which was to hold and exercise the same power and authority in all matters and causes as it held and exercised in the past, but the district within which the last two courts were to exercise jurisdiction was not to extend beyond the boundaries of the counties in which they held their sessions. Processes, issued by courts of record, however, were to run as hitherto throughout the province. As under the old law, the judges were to be appointed by the governor and the same number, as therein designated, were required to officiate in them. Henceforth, all justices of the Inferior Courts, judges of probate, justices of the peace, sheriffs, coroners, registers of probate, recorders of deeds and all other civil officers were to exercise their several offices only in the counties to which they respectively belonged. Furthermore, transitory actions in which both parties concerned were inhabitants of the province were in the future to be commenced only in the county in which either resided. In Hillsborough and Cheshire counties, the Superior Court was to hold one session a year and in Rockingham county it was to hold two sessions, while the Court of Common Pleas and

[1] *Laws of New Hampshire*, edition 1771, p. 205 *et seq.* The act did not go into effect until 1771, the king's approval of the measure being necessary.

the Court of Quarter Sessions in the three counties were to hold four sessions annually.[1] As for the other two counties the law provided that they were to be subject to the courts of Rockingham county until the governor and council declared them ready for the exercise of full county privileges, when the legislature was to provide for the establishment of such courts as should then be deemed necessary. This the governor did in May, 1772, but it was not until the following year that an act was passed, fixing the times and places for the sessions of the several courts in those counties.[2]

Sometimes petitions were presented to the governor and council and also to the assembly by persons concerned in suits at law, praying that the judgments rendered in their particular cases might be rectified or vacated, or that a re-

[1] *Laws of New Hampshire*, edition 1771, p. 206. In Rockingham county, one session of the Superior Court was to be held in Portsmouth and one in Exeter, the first session to begin on the first Tuesday in March, the second on the first Tuesday in September. In the same towns also the Superior Court of Common Pleas was to meet, three sessions beginning on the first Tuesdays in February, May and November being held in Portsmouth and one session commencing on the last Tuesday in July being held in Exeter. The Court of General Sessions was to convene in Portsmouth on the second Tuesday in February, May and November, and in Exeter on the first Tuesday in August. In the county of Hillsborough all the courts were to be held in the town of Amherst, the Superior Court on the second Tuesday in September, the Court of Common Pleas on the first Tuesday of every January, April, July and October, and the Court of General Sessions on the Thursday following the opening of the Court of Common Pleas. In the county of Cheshire, the Superior Court was to sit in Keene annually on the third Tuesday in September while the other courts were to be held an equal number of times in Keene and Charlestown. In the former place the Inferior Court was to sit on the second Tuesday in October and July, in the latter on the second Tuesday in January and April, while the Court of General Sessions was to be held in each town on the Thursday following the time set for the Inferior Court.

[2] *Provincial Papers*, vol. vii, 274, 275, 276, 302, 319 *passim*.

hearing might be allowed, or that the actions might be reviewed or revived, or that a new trial might be granted. In some cases people petitioned for permission to bring suits before the courts, which through default, or noncompliance with the provisions of the law or for some other reason could no longer be tried in the courts. Then, again, complaints were received that justices had proceeded contrary to law and had given judgment against the evidence presented. After the petitions were duly considered the relief asked for was sometimes granted, and, when necessary, special acts were passed to accomplish the purpose. Occasionally, also, the legislature was presented with petitions from parties desiring divorce and sometimes special acts were passed granting the same. This practice, however, was discountenanced by the home government.[1]

In New Hampshire public opinion was always against the erection of any court not authorized by act of the legislature and strongly averse to one that proceeded without a jury. Hence arose in great measure the unpopularity of the Court of Appeals. During the administrations of Presidents Cutt and Waldron, this court consisted by law of the entire legislature; but from that time on the court of last resort in the province was specially provided for in the royal commissions and instructions and consisted always of the governor and council. The desire to have the court remodeled or abolished was very strong at times, but none of the attempts which were made with that object in view proved successful.[2]

[1] *Laws of New Hampshire*, edition 1771, pp. 176, 196: *Provincial Papers*, vol. iii, 335, 338, 805, 286, 137, 240, 342, 293, 555, 717, 277; vol. iv, 788, 804; vol. v, 507, 392, 875, 772, 761, 578, 658, 831, 636, 165, 667; vol. vi, 425, 135, 147, 525, 840, 246, 295, 139; vol. vii, 148, 58, 97, 279, 324, 238, 318, 2, 22, 200 *passim*.

[2] A most determined and sustained effort was made during the session of the legislature which began in December, 1727. See *Provincial Papers*, vol. iv, 269, 272, 273, 275, 286, 475 *et seq*.

Another grievance which was far more serious than the one regarding the Court of Appeals concerned Portsmouth as the seat of the law courts. Now, at the time when Portsmouth was designated as the place where the courts should be held the inhabited portion of the province was limited to the district near the coast. It was small in extent and contained but few settlements and only a few thousand inhabitants. In hardly any case was the habitation of any settler further distant from the chief town than fifteen miles, while most people lived well within ten miles of the place. Consequently no great inconvenience resulted from having all the courts held there. Moreover, Portsmouth was well situated for trade and commerce and was by far the safest place in the province to keep the records, being defended on one side by a fort and protected to some extent on the other sides by the other settlements.

As the settlements extended further from the coast, however, the inconvenience experienced and the charges incurred by many suitors increased, and in cases, involving small amounts, the expenses of the parties bringing the suits were apt to be as much as, or even more than, the damages that could be claimed. This naturally tended to discourage some people from bringing small cases into court and consequently worked injustice to those who had the law on their side and were legally entitled to redress. Hence arose the feeling that the courts should be more centrally located. Then, too, some thought that the holding of the courts in different towns would be a good thing for trade. Furthermore, local pride was also a factor that figured in the case. On several occasions attempts had been made to have some of the courts held in other towns, but as the governor and council did not look with favor upon the change, nothing was accomplished. Upon the accession of Governor Belcher the subject again came to the front. The house

then voted that, inasmuch as great expense and trouble were now incurred in attending the courts by people and constables who lived at a great distance from Portsmouth, the Court of General Sessions and the Court of Common Pleas should be held in the future quarterly in the "four ancient towns, viz., at Portsmouth in December, at Exeter in March, at Dover in September and at Hampton in June." Furthermore, to relieve the constables, it was provided that they should only attend the courts held in their respective localities, except the constables of New Castle, Newington, Rye and Greenland, places adjacent to Portsmouth, who were required as in the past to attend also the sessions of the Superior Court. The proposed changes being accepted by the council, a bill incorporating them was quickly passed and approved by the governor, but before many years passed all the courts were again being held in Portsmouth in consequence of the disallowance of the act by the king.[1]

For many years nothing further was done in the matter although complaints were frequent, the inconvenience and expense incurred steadily increased and the cry for relief became more and more general. Notwithstanding this, however, it was not until 1755 that the subject was again forced to the front and then it was brought about in this way. Ellis Huske, the chief justice, had resigned and the governor found that it was impossible to get a gentleman of ability, good standing and unquestioned integrity to take his place because the fees and perquisites attached to the office were not sufficient to induce men of that stamp to accept the position. Moreover, the court had fallen into great disorder and by repeated delays the course of justice

[1] *Provincial Papers*, vol. iv, 430, 440, 578, 764, 730, 585, 773, 654, 844; vol. iii, 656, 676. The order in council repealing the act was passed in June, 1735.

was in a manner stopped. Then, too, the assistant justices were upon the point of resigning. At last, the governor prevailed upon Theodore Atkinson, a man whose integrity and ability was unquestioned, to accept temporarily a commission for the place. Thereupon the other justices expressed a willingness to continue at their posts until the matters then pending before the court were disposed of. The governor graciously accepted the offer of their services and persuaded them to remain at least until the matter could be brought before the assembly, when, if no provision was made to support the dignity of the court, he would offer no further objection to their resigning.

Accordingly, when the assembly met in January, 1755, he most earnestly recommended to the assembled delegates the necessity of fixing an appropriate salary upon the justices, sufficient to enable them to properly support the dignity of the court. Otherwise, he said, the sessions of the court must be discontinued or persons unequal to the task must be selected to fill the vacancies. In reply, the representatives voted to grant the justices collectively the sum of £150 for one year but only on condition that the province was divided into two counties along the lines laid down in their vote. Although the council agreed with the house as to the expediency of dividing the province into two counties and expressed a desire to forward the same, nevertheless, they declared that they could by no means consent to the courts being moved from Portsmouth as that had been disallowed by the king, so that it was not for them to take the matter up again. As for granting the justices a salary, that was necessary, but, as the grant was made conditionally and tacked to something else, they advised that a separate vote be sent up on that head. This, however, the representatives refused to do. Six months later the governor was again forced to call their attention to the matter, for

the Supreme Court was scheduled to sit within a few days and the chief justice and his assistants had declined to serve any longer "without a reasonable salary for their trouble and time." Notwithstanding this, however, the representatives refused to consider the matter further. The following year, the governor again called upon them to settle a salary upon the justices. In reply they referred to their previous votes and declared that the difficulties and hardships which the inhabitants were put to in being obliged to come to Portsmouth to attend the courts were so great that they could not in justice to their constituents grant the justices of the Superior Court a salary until a suitable act was passed for dividing the province into counties. As the representatives continued obdurate and the province was deeply involved in war, the governor did not deem it wise to press the matter further until after Louisburg and Fort Frontenac had been reduced and a new assembly had been summoned. In the meantime, however, he informed the home government of the trouble and asked for advice as to the course he should pursue. Moreover, rather than have the sessions of the Superior Court discontinued, he agreed to pay the chief justice a salary out of his own pocket.

At last, in November, 1758, he again requested the representatives to provide suitable salaries for the justices, at the same time telling them that he had with great difficulty persuaded their honors to continue in office some time longer, that the business of the court might not be interrupted. The response, however, was that no salary grant would be passed until the province was divided into counties in such way and manner as should be agreed upon by the general assembly. A joint committee of the two houses which was then appointed to consider the question reported in favor of dividing the province into three counties, but made no suggestions as to the manner in which it should

be done, for the members found it impossible to agree on that point. When the assembly re-convened the following autumn Governor Wentworth found his position strengthened by an instruction which he had received from England. This he now communicated to the assembly. It practically commanded that body to settle competent salaries upon the justices and repay the governor such sums as he had paid the chief justice in the way of salary. After perusing it the representatives declared that the instruction appeared to be founded on facts related to the king "without their concurring circumstances" and refused to comply with its provisions until the province was divided into counties. Although the governor maintained that the two questions were in no way related to one another and repeatedly urged the representatives to obey the royal commands, the latter persistently refused to retreat from the position they had taken. The result was that both questions were still unsettled, when John Wentworth assumed the reins of government in 1767.[1]

As the latter did not appear to be against a division of the province into counties and the council seemed to look with favor upon it, the prospects of the matter being settled now seemed bright. After some time the two houses agreed upon the number of counties into which the province should be divided. A question then arose as to the right of the lower house to have a voice in the establishment of the courts in the several counties. As the council denied that it had any such right and the lower house insisted that it had, a deadlock ensued and the session ended without anything further being done in the matter. The governor then wrote home, explaining the necessity of a division and

[1] *Provincial Papers*, vol. vi, 339, 340 to 352, 418, 419, 453, 691, 697, 699, 722, 718, 720 to 730, 747, 759, 766, 791, 879; vol. vii, 61, 42, 68, 70, 72 *passim*.

proposing a division into five counties, only three of which were for the present to enjoy full county privileges. Furthermore, he requested that permission should be given for such a division and desired them to inform him how it should be done, whether by act of assembly or by an order of the governor and council. He then informed the assembly of what he had done. The latter replied that what he had written to the authorities in England coincided exactly with their sentiments except in one particular, and that was in regard to the manner in which the division should be made. On that point their own sentiments, as well as those of their predecessors, were that the division could only be effected by an act of the legislature. They, therefore, requested him to acquaint the king's secretary of state with the real status of the case, to the end that permission might be obtained to make the division by act of the legislature. A little later they decided not to wait until the king's pleasure in the matter was known, for they declared their intention of granting no supplies until the grievance respecting the courts was removed. Though the governor protested, it was in vain. As a result no supplies were granted. At last, word was received that the legislature might pass the act desired, providing a saving clause was inserted suspending its operation until the measure was approved by his Majesty. Although the two houses failed for a time to agree upon the principal points involved, they finally adopted the governor's suggestion about the number of counties while the right of the house to have a voice in the establishment of the courts was finally conceded, though with reluctance. Thereupon an appropriate bill was passed by the two houses and approved by the governor. At last, in 1771, word was received that the act had been formally approved by his Majesty. The grievance, concerning the

courts being removed, the assembly then proceeded to grant the justices of the Superior Court a salary.[1]

In the administration of justice the governor, the judges of the various courts, the attorney-general, the clerks of the courts, the justices of the peace, the jurors, the sheriff, the coroner, and the constable all played an important part. In another connection the governor's postion in the judicial system has been clearly set forth so that little need here be said respecting it.[2] As he was the one who appointed all of the judges in the province except those who formed the Court of Appeals, he was directly responsible for the kind and type of men who occupied the bench. Moreover, after appointing them it was within his power to hold them to a strict accountability for the proper performance of their duties, for he could remove them for cause. Practically speaking, the judges held their office during his pleasure, for, although one of his instructions strictly forbade him to remove such officials except for some good and valid reason which was to be signified to the home government, it did not, as a matter of fact, prevent him from removing those whom he disliked, though in many cases it undoubtedly acted as a restraining influence. Occasionally complaint was made that certain judges were selected rather for the purpose of advancing the governor's interests than with the view of administering justice impartially to all. Sometimes, too, it was said that judges were biased, careless or otherwise unfitted for the work they were expected to perform. This, however, was the exception rather than the rule. The judges were not men who had been bred to the law, for there was scarcely a lawyer to be found in the province. As a

[1] *Provincial Papers*, vol. vii, 129, 133, 134, 136, 139, 141, 144, 154, 155, 165, 174, 178, 182, 184, 198, 202, 217, 228, 229, 274, 275 *passim*. *Ibid.*, vol. vi, 911. The act was passed in the spring of 1769.

[2] *Supra*, p. 72.

rule they were persons of good character and unquestioned integrity, upright, honest and conservative in temperament. Some possessed considerable wealth and were prominent in the business world, while others had served the province in many capacities and had filled with credit most of the local offices in the towns in which they resided. They were, therefore, men of experience and well trained in the affairs of government. All were required to take such oaths as were prescribed by Parliament, as well as an oath to execute their trust faithfully and administer justice impartially. In order that there might be a due and orderly method of procedure in the courts, they were empowered to make such rules and regulations as they deemed necessary. Then, too, in order to avoid all occasion of partiality, the law prohibited them from taking an active part in suits in which they were related to any of the parties concerned or directly interested in the result nor could they appear as attorneys in any suits that had been previously tried before them. With the exception of the period from 1686 to 1689, when the experiment of consolidating the northern colonies under one general government was tried, and a few years immediately preceding the Revolution, none of the judges ever received from the legislature a regular salary for their services, their only compensation being the fees which were attached to their office. Just what these in the aggregate amounted to it is impossible to say with any degree of accuracy, as it depended upon the number of suits tried and the amount of business transacted. It is certain, however, that the judges of the lower courts received far more than those who constituted the Superior Court. In fact, the amount which the latter received was so small that in 1755 the governor was obliged to appeal to the legislature to grant them adequate compensation, but this the lower house persistently refused to do until the province was divided into counties. An act

providing for such a division was finally passed in 1769, but it was not until 1771, when word was received that the king had approved it, that the assembly made the necessary grant and even then it was for a period of one year only. As it had to be renewed annually, the judges of the Superior Court were left at the mercy of the legislature as far, at least, as their salaries were concerned. As for the other justices, they continued as before to receive fees in payment of their services.[1] Besides the judges already mentioned there was a judge of probate and a register of probate, who possessed in general the same powers as the like officers in England possessed. Then, again, for the trial of those accused of violating the acts of trade and navigation and of those charged with offences committed on the high seas there was a vice-admiralty court. This, however, was not a provincial court but one established by the home government, which had divided up the territory comprising the American colonies into districts, in each of which there was

[1] *Provincial Papers*, vol. vi, 60; vol. vii, 276, 307, 324, 368, 230. According to the law promulgated during the administration of Governor Andros the salary of the Chief Justice was fixed at £150 and that of the assistant justices at £120 a year. At that time, of course, the jurisdiction of the court extended over all the New England colonies. According to Richard Waldron, who, from having been long in public life was well qualified to speak on the subject, the justices of the Inferior Court in 1748 were able to save in fees about £25 a year, while the justices of the Superior Court probably got £5 or £10. As the province increased in population and extent the amounts naturally became greater. The grant made by the legislature in 1771 was £65 for the Chief Justice and £60 each for the assistant justices. In 1772 and 1773 it remained the same, while in 1774 the sums granted were respectively £80 and £75. For biographical sketches of some of the judges and lawyers, see Bell, *Bench and Bar of New Hampshire*. For the form of the various oaths which officials had to take and for the fees they received, see *Province Laws*, edition 1761, 72–74, 108, 124–129, 136; *Laws of N. H.*, vol. i, 546, 559, 596, 626; *Provincial Papers*, vols. i–vii, *passim*.

one of these courts. New Hampshire and the neighboring colonies formed one district. The judges received their commissions from the authorities in England and all trials were without a jury.

Before any actions could be tried in the provincial courts due notice had to be given the persons affected in order that they might have time to prepare and make their defence. Moreover, before judgment was rendered both parties had the privilege of being heard. Furthermore, the law provided that they could either conduct their own cases in person or with the assistance of others. As there were at first no lawyers, the parties went into court with their witnesses and gave in their testimony under oath, but no record of the same was made. Later, on account of the scarcity of lawyers, a law was passed, providing that no person should be represented by more than two attorneys. This enabled the other party to the suit to retain some one to protect his interests, for an attorney could not under the law refuse a case, if tendered the legally established fee. To protect a person from suffering a non-suit through the default, negligence or omission of his attorney, it was stipulated that the latter should draw a new writ without fee, if the party saw fit to revive the suit. Before being admitted to practice, all attorneys were required to take an oath, to be delivered by the clerk in open court.[1] For the prosecution of cases in which the king was concerned there was a provincial official, styled an attorney general.

To facilitate the work of the courts there was an official,

[1] For the form of oath which attorneys took see *Provincial Laws*, 1696–1725, p. 47. For the forms of the various writs, such as summons, capias, attachment, replevin, *scire facias*, etc., see *Laws of New Hampshire*, edition 1761, p. 87 *et seq.* According to the law of 1714 the attorney's fee for trying a case in the Superior Court was 12 s; in the Inferior Court 10 s.

called the clerk. Under the law of 1701, he was appointed by the judges of the respective courts, one being named for each court. It was his special business to draw up, enter and keep the records of the court, the declarations, the writs, the pleas and the judgments. Furthermore, he was required to issue all processes and writs for bringing suits to trial. He also granted writs of attachment, warrants and executions. Moreover, he sent to the sheriff the writs, commanding him to impanel and return persons to serve as grand and petty jurors. In his office, too, had to be filed the declarations of appeal. Like the justices, he received certain fees for his services. His office and that of sheriff were said to be the best paying offices in the entire province.[1]

In the towns in which they lived the justices of the peace were very important officers of the law. Their duties were many and varied. They acted both in a ministerial and a judicial capacity. It was their business to aid in preserving the peace and their duty to bring to punishment those who violated the law. They could either make arrests themselves or authorize others to make them. They heard charges against offenders, issued summons and warrants in connection with the same, examined witnesses, bound persons over for trial or to keep the peace and admitted them to bail. They were empowered to exercise jurisdiction in certain civil cases, power being given them by law to try causes under the value of forty shillings, excepting such as involved title to land. They could also solemnize marriages and take the acknowledgment of deeds. Affidavits, taken out of court, were also sworn to before them and various petty officials were required to have the justices ad-

[1] *Laws of New Hampshire*, vol. i, 703 *et seq; Provincial Papers*, vol. iii, 184, 216, 220, 221. According to a statement made by Richard Waldron in 1748, the clerk of the Superior Court then received about £30 a year while the clerk of the Inferior Court received about £125.

minister to them the oath of office required by law. They could commit to prison disturbers of the peace and cause their weapons to be taken from them. They had power, also, to try persons accused of profane swearing, of drunkenness and of petty thefts. They, too, were, authorized to provide for the relief and maintenance of the poor. Moreover, according to the provisions of certain acts, they were given full power to determine all violations of those acts. Though many other things, which the provisions of various acts required them to attend to, might here be cited, sufficient has already been given to show the importance of the office and the variety, extent and nature of the duties attached to it. Such of the justices as were designated by the governor in the commission of the peace constituted the Court of Quarter Sessions.

In the administration of justice juries also played a very important part. As in England there were grand and petty juries, and occasionally, also, juries of inquest. In the main, the duties of the jurors were the same as those of jurors in England. During the early part of the provincial period they were regularly chosen by the freeholders of the several towns as had been the custom when the New Hampshire settlements were under the jurisdiction of Massachusetts. As this practice was not in conformity to that in England, it was later abandoned and the jurors were impaneled by the sheriff. According to the law passed in 1699 they were to be taken from the several towns in proportion to the number of inhabitants which each contained. The sheriff, however, could return jurors *de talibus circumstantibus* when, in selecting a jury, the regular panel became exhausted by reason of challenge, default in appearance or some other cause. In cases where the sheriff was a party or in any way related to the parties concerned the jury was summoned by the coroner. The penalty for

not appearing when summoned was a fine of forty shillings. Later this was raised to five pounds.

By an act which was passed in 1754 but did not go into effect until after the king's approval of the measure in 1758, the method of returning jurors was completely changed. Under this law the selectmen of each town and parish were required to make out a list of those who were qualified by law to serve as jurors. One-third of the names on the list were then to be put in one box and two-thirds in another. From the former, which contained the names of those who, in their opinion, were best qualified, were to be drawn the jurors for the Superior Court; from the latter, those who were needed for the lower courts. At the proper time the clerks of the respective courts issued writs, requiring the town clerks to return as many jurors as were therein designated. Town meetings were then called to which those eligible to serve as jurors were summoned. The boxes being opened, the number of names required were drawn out of the respective boxes. The persons whose names were thus drawn were the ones who were required at the proper time to attend the courts. At these meetings grand jurors were also chosen. In order to keep the lists up to date it was provided that they should be revised and regulated once a year. As in England jurors throughout the provincial period had to possess certain property qualifications. They received fees for their services.[1]

The sheriff was also a very important official. He was appointed by the governor and virtually held office during the latter's pleasure. He was required to take an oath for the proper performance of his duties, and, after 1714, was compelled to give a bond of £2000. He was entrusted with the proper execution of the laws. It was his

[1] *Laws of New Hampshire*, vol. i, 71, 106, 657, 658 *passim; Province Laws*, edition 1771, p. 187 *et seq.*

duty to arrest or commit to prison those who either broke or attempted to break the law. He was responsible, too, for the safe-keeping of the prisoners and had full charge of the province jail. Moreover, he attended the courts and was obliged to serve and execute all processes issuing from them. Until 1758, he also impaneled and returned whatever jurors were required. From 1771, when the act dividing the province into counties went into effect, there was a sheriff for each county. For his services he at first received only such fees as were prescribed by law but later he received a regular salary and in addition a certain amount for impaneling jurors.

In cases where the sheriff could not by law act, the coroner acted for him. The principal duty of the coroner, however, was to hold inquests in cases of violent or sudden deaths. When such cases were reported, he summoned a jury of at least fourteen persons who, after being sworn, viewed the body, heard the evidence and made diligent inquiry into the circumstances of the case. After putting their verdict in writing, they gave it to the coroner who made return to the justices of the Court of Assize and of Oyer and Terminer.

As for the constable, he was a local officer of some importance in the place in which he lived. He is to be regarded as a conservator of the peace within the town. He was obliged to obey the warrants and precepts of the judges, the coroner, and the sheriff and execute all warrants sent him by the proper authorities. He was also required to serve the writs and summonses which the justices of the peace issued in such cases as were tried before them and was empowered to collect certain fines imposed by them. Unlike the other officials, he was elected by the freeholders of the town and not appointed by the governor. He was a town officer.

CHAPTER VII

Military Affairs

Living in a wilderness, exposed on every side to attack and beyond the immediate reach of helping hands if suddenly assailed, the inhabitants of the struggling settlements along the Piscataqua and its branches early deemed it necessary to have some sort of military organization and adopt some defensive measures for their own safety and protection. After the union with Massachusetts, however, the supervision and control of all matters, pertaining to defense and military affairs in general devolved on that government. This continued for nearly two score years, when New Hampshire was severed from the Bay and organized as a separate province. Under the form of government then established, the control of the provincial forces and the management of military affairs were vested in the president and council.[1] In form, however, the militia underwent comparatively little change. It consisted of one troop of horse for the entire province, one company of artillery for the fort at the mouth of the Piscataqua and one company of foot-soldiers in each town. For each of the companies a captain, lieutenant and ensign were appointed, and for the troop a captain, lieutenant and cornet. Power to select the inferior officers of the same was given to the chief officers of each, while the management of the militia in each town was entrusted to a committee of three. An

[1] *New Hampshire Provincial Papers*, vol. i, p. 378.

order was also issued that those who had served as troopers under the Massachusetts government should either join the provincial troop or enlist as foot-soldiers in the towns in which they lived. A few months later this order was repeated. At the same time another was issued to the effect that all the trained soldiers, living within the limits of New Hampshire, from sixteen years of age up, should obey such orders and commands as were given by the officers commissioned in the various towns by the government, both respecting arms, ammunition and the kinds of exercise provided for in such laws and orders as had been or might be made respecting military affairs.[1] At the head of the provincial forces was placed Richard Waldron, who was given the rank of major; but upon his elevation to the presidency upon the death of President Cutt the following spring, William Vaughan was made commander-in-chief of the militia and given the same rank. For a number of years the militia remained upon substantially the same footing as thus organized, and except during the period when Cranfield was the executive head of the province the officers were seldom changed. According to Cranfield, the horse and foot numbered about 450, of which 60 were horse. Most of the foot, however, were "ill armed and exercised," while ammunition was scarce. These were frequent causes of complaint throughout the colonial period. The troop of horse, however, does not seem to have been popular. In 1684 it apparently comprised only a dozen members, while later it appears to have been disbanded entirely.

With the exception of the period from 1686 to 1692, the institutions of government, which were established upon Cranfield's arrival in the province continued without essen-

[1] *New Hampshire State Papers*, vol. xix, pp. 667, 671; *Provincial Papers*, vol. ii, pp. 30, 71.

tial change until the time of the Revolution. Earlier in this work, the numerous powers which the commission vested in the executive have been mentioned, and attention has been called to the fact that the governor, as commander-in-chief of the provincial forces, was clothed with as full and ample powers as were possessed by any captain-general, but that in practice he was never able to exercise them to any very great extent without the aid and co-operation of the assembly. Reference, too, has been made to the causes contributing to this state of affairs. Furthermore, the encroachments, which the assembly made upon the governor's military powers, have been plainly set forth, and the policy, which that body adopted in order to accomplish its object, has been clearly stated. As a result, the governor was, in reality though not in theory, shorn of the greater part of his power as commander-in-chief, for not only did the assembly at last virtually exercise the most important military powers which the king intended the executive alone should exercise, but it practically dictated the terms upon which the various military operations were undertaken.[1]

In October, 1692, while the province was involved in war, an act was passed for the better regulation of the militia. According to its provisions, all males, sixteen years of age and upwards, except schoolmasters, ministers, surgeons and certain officials, were required to enlist under the captains in their respective towns.[2] Moreover, each was to provide himself "with a well-fixed gun or fuse, sword or hatchet, knapsack, cartouch box, horn, charger and flints with six charges of powder," and was to appear thus equipped whenever and wherever it should be appointed. Further-

[1] *Supra*, pp. 72, 193 *et seq.*

[2] The officials exempted were the sheriff, treasurer, collector, searcher and surveyor of customs, councilors and justices of the peace.

more, every soldier was to keep one pound of good gunpowder, and twenty sizeable bullets in his home and was to bring the same into the field whenever required. Failure to comply with any of these provisions rendered the delinquent subject to a designated fine. If for any good and sufficient reason one could not appear in person upon the guard and watches, he was at liberty to put a well-armed man in his place, while those who could not provide themselves with the necessary arms and ammunition were, if unmarried, to be put out to service by the justices of the peace until they acquired sufficient means to procure what the law required. As a precautionary measure, the firing of all firearms after eight o'clock in the evening was strictly forbidden, except in case of an alarm, insurrection or other lawful occasion, when the firing of three muskets, or one great gun and two muskets, and the beating of a drum was to be regarded as the signal for action. When given, any who neglected their duty in taking and spreading the alarm rendered themselves liable to a fine of forty shillings, which was also the penalty designated for giving a false alarm. With the view of preventing people from leaving threatened or exposed towns, it was provided that no enlisted man should, during the war, leave the town where he was enlisted without a proper discharge either from the committee of the town or from the commander-in-chief on pain of incurring a fine of twenty pounds, while to compel the men to serve, when detached or impressed out of the various town companies, the penalty for failing to appear when notified was fixed at four pounds, except where the refusal to serve was accompanied by contempt, in which case the penalty was to be death or such other "grievous" punishment as a court-martial should determine. To provide for emergencies, it was stipulated that, if any place was attacked by the enemy, any captain might enlist or detach

as many of his men, not exceeding one-third of his company, as he should see fit and deem necessary for the relief of the stricken town and might proceed thither without waiting for any order from his superiors, taking care, however, to leave behind for the defense of his own town at least five men for each garrison in it. Non-compliance with the captain's orders on such an occasion or refusal to attend such service was made punishable by a fine not exceeding forty shillings or by such military corporal punishment as the captain or chief officer of the town company should decide. To prevent any grain from falling into the hands of the Indians, the law provided that it should be brought within range of some garrison, on pain of the owner suffering a fine of five shillings a day for every day's neglect after due warning to remove the same was given. In case the enemy made an attack in the county of York in Maine, the executive, with the advice and consent of the council, was authorized to raise and dispatch men to that county. Finally, the act stipulated that nothing in it should be expounded, construed, or understood to diminish, alter or abridge the power of the executive or commander-in-chief, but that in all things and upon all occasions he or they had power to act as fully and freely as any governor, lieutenant-governor or commander-in-chief ought or might do to all intents and purposes as if the act had never been passed, anything contained in the same to the contrary notwithstanding.[1]

From time to time as the exigencies of the occasion or the demands of war required, other acts were passed relating more or less directly to military affairs, but in the main they were temporary in character. Thus, by one law the charge incurred in caring for and treating the injuries of

[1] *Laws of New Hampshire,* vol. i, pp. 537, 709. The act was approved by the Queen in Council November 19, 1706.

those who were wounded by the French and Indians while engaged in the service of the province or while acting as volunteer was to be defrayed out of the public treasury. By another law, the towns were required to keep a proper stock of powder and arms; by another they were to keep a supply of snow-shoes on hand, and by still another they were compelled to have a certain amount of bread ready, in order that a speedy pursuit of the enemy might be made.

In 1718 a more comprehensive law for the regulation of the militia was passed. It provided that all male persons from sixteen to sixty years of age, except negroes and Indians, should bear arms, and to prevent persons from evading enlistment by moving from place to place, it was stipulated that persons so offending should, upon conviction before a justice of the peace, be fined for every such attempt ten shillings. Moreover, once every quarter the clerk of every troop and company was to make out an exact list of all persons living within the precincts of his troop or company and present the same to the captain or chief officer of the same on penalty of forfeiting forty shillings for every default. Under this law, every enlisted soldier and householder, except troopers, were to be always provided with a good, serviceable gun, a knapsack, a good sword or cutlass, a cartouch box, one pound of good powder, twenty bullets, twelve flints, one worm and one priming wire, on penalty of six shillings for failure to furnish the necessary gun and two shillings for every other defect, and to compel compliance the like sum was to be assessed against them every four weeks. As for the troopers, they were each to be provided with a good, serviceable horse, of ten pounds value and not less than fourteen hands high, the horse to be equipped with a good saddle, bit, bridle, holsters, pectoral and cropper, and the trooper with a suitable carbine, belt and swivel, a case of good pistols, a sword or cutlass, a flask

or cartouch box, one pound of good powder, three pounds of sizeable bullets, twenty flints, and a good pair of boots and spurs on penalty of twelve shillings for want of such horse and three shillings for every other defect, the like sum to be paid every six weeks until the provisions of the law were complied with. Furthermore, a trooper was not to dispose of his horse without the consent of the chief officer on pain of suffering a fine of five pounds and was required to appear at the time and place appointed for exercise on penalty of ten shillings for every day's neglect. To each regiment two troop of horse might be attached, each to consist of not less than sixty men with officers. According to this law, regimental musters were to be held triennially while company or troop musters were to be held four days annually. Failure to hold the latter rendered the captain of the company or troop liable to a fine of five pounds. Privates absenting themselves on such occasions incurred a fine of five shillings, and, if they did not pay it by the next training day or had no estate to pay it with, they might then be punished "by laying neck and heels," or by riding the wooden horse for a period not exceeding one hour. And if they absented themselves the second training day, they might be apprehended or brought to the training field and there punished according to law. Power was also given to the commission officers to punish any disorders or contempts on training days or on watches by inflicting on the offenders a punishment no greater than "laying neck and heels," riding the wooden horse, or a ten-shilling fine. Those exempted from exercising on training days were the provincial officials, members of the legislature, ministers, elders, deacons, doctors, schoolmasters, regular ferrymen, former commission officers of the militia, constant herdsmen, one miller to every gristmill, masters of vessels of thirty tons and over, and, of course, lame and

disabled persons, while those who were excused from military watches and wards were the members of the legislature, the secretary of the province, the ministers, elders, doctors, constables, regular ferrymen and one miller to every gristmill. All exempt persons, however, were required like the others to have the necessary arms and ammunition required by law. As for military watches, they were to be appointed and kept in every town at such times and in such numbers as the chief military officers of the town should decide. The right to nominate, appoint and also remove sergeants and corporals was vested in the captain and commission officers of each company. According to this law, too, the captain or chief officer of each company or troop was required at least twice a year to order a diligent inquiry to be made into the state of his company or troop and cause an exact list to be made out of all the soldiers and inhabitants living within his precinct. The names of the delinquents were also to be set down and note was to be made of such fire-arms as were either lacking or below the standard. Then, again, the chief officer of a regiment was empowered to summon the commanding officers of the various companies constituting it to a conference as often as the needs of the service required and there formulate such orders as the majority of them should deem necessary for the better regulation of the several companies and the promotion of military discipline. Furthermore, the commanding officer was authorized to have all offenders against the military laws brought before them and all matters proper for their cognizance were to be heard and determined according to law and sentence given accordingly. Then, too, all officers were required to pay due respect and obedience to their superiors on pain of being fined five pounds. By another provision of the law every town was obliged to have a regular stock of powder and ammunition,

consisting of one barrel of good powder, two hundredweight of bullets and three hundred flints for every sixty enlisted soldiers within its borders. Failure to keep such a stock was made punishable by a fine of five pounds every three months the law was not complied with. In case of an alarm, the trained soldiers and all others capable of bearing arms in the town were required to appear immediately, fully equipped with arms and ammunition on penalty of a five-pound fine or three months' imprisonment. Furthermore, one or more horsemen were in such cases to be dispatched at once to the other towns to spread the alarm, and, if the alarm was made at New Castle or any other town which lay frontier to or in great danger of the enemy the captains of the adjacent towns were to send forthwith such relief as they should deem necessary. To prevent any unnecessary alarms, it was provided that anyone wilfully giving a false alarm should be punished by a fine of twenty pounds or six months' imprisonment. Respecting the quartering and billeting of soldiers upon the people, the law specifically stated that no military or civil officer should quarter or billet soldiers or seamen upon any of the inhabitants other than licensed taverners without their consent under penalty of one hundred pounds. All fines and penalties were to be disposed of for the purchase and repair of drums, trumpets, colors, banners, halberts, and to pay drummers, trumpeters and other company charges while any overplus was to be laid out in arms and ammunition for a town stock. If, however, the fines were not sufficient for the purposes named, the commission officers of the troop or company were empowered to make an assessment upon the members of the same. An act was also passed, containing the same provision respecting those wounded when in actual service against the enemy as the act previously mentioned.

The following year the militia act was somewhat strengthened. It was then enacted that, whenever the commanding officer of any company was legally required to detach any soldiers out of his company for his Majesty's service, a warrant left at the soldier's home should be accounted a sufficient impress, and failure to respond to it was made punishable by a fine of four pounds. Furthermore, in case the offender did not pay it, he was to be sent to jail until both the fine and all accruing charges were satisfied. Moreover, any who in time of war neglected to give their attendance at the garrison to which they were assigned or who neglected to perform their duty of watching and warding were to be fined twenty shillings and all charges for every offense, and in default of payment were to be committed to prison until the same was paid. Furthermore, no person in actual service was to depart from his station without receiving a license from the commanding officer on pain of being proceeded against as a felon. Then, again, no one during time of war or when a military watch had been set was to set off a gun after sunset under penalty of being fined, upon conviction before a justice of the peace, five shillings for each gun set off, and, if the person so offending belonged to a garrison or force in actual service and in his Majesty's pay, he was to be punished, at the discretion of the commanding officer, by being put in the bilboes, or by laying neck and heels, or by riding the wooden horse, or by running the gauntlet. Respecting deserters, the law provided that such persons should be apprehended at the instance of a justice of the peace and secured for trial at the next Superior Court or at a Court of Oyer and Terminer to be held by commissioners specially appointed by the governor. In 1722 an additional act was passed, providing that those who neglected or refused to do their duty in building or repairing the garrisons where

they were stationed, should be subject to a fine of five shillings for every day's neglect or refusal. And, if they refused to pay the same, they were to be imprisoned until both the fine and accruing charges were paid.[1]

In 1754, the fine for failing to attend trainings when duly warned was fixed at ten shillings in the case of foot soldiers, and at twenty shillings in the case of troopers. Then again, those liable to military watches and wards were thereafter for neglecting the same to be fined ten shillings instead of five. Moreover, the parents of those under twenty-one and the masters of servant apprentices were now held responsible for the payment of any fines incurred by such minors and servant apprentices. It was also provided that in time of war all commanding officers might order those under their command to carry such arms and ammunition about with them as they should judge necessary, refusal to obey such an officer being made punishable by a fine of ten shillings. Furthermore, no persons were to be excused from bearing arms, attending trainings or from impresses upon the certificate of two surgeons unless for just cause they first obtained an orderly dismission from the commission officers of the company or troop to which they belonged. Finally, it was enacted that all the acts relating to the militia should thereafter extend throughout the province to all plantations whether or not the same were included in townships, parishes or legally established districts.[2]

With the increase in population came an increase in the number of men in the militia. As the old towns became more thickly settled, the original militia companies were divided, and, as new towns came into being, new companies were formed so that in time a battalion was authorized by

[1] *Laws of New Hampshire*, 1696-1725, pp. 91 *et seq.*, 146, 165.

[2] *Laws of New Hampshire*, edition of 1761, p. 195.

the governor. Then, through the operation of similar causes a regiment was formed, and, as the population increased, two regiments were authorized. Moreover, cavalry again found favor, and during war-time in particular mounted men were frequently employed, especially in patrolling the highways and in spreading alarms. In 1730, the militia consisted of 1800 men, comprising two regiments of foot with a troop of horse each. At that time it was stated that there were no Indians living in the province. The following year, Governor Belcher informed the assembly that the fines for neglect of appearance on muster days were so low that the militia was "in a manner dwindled to nothing." Notwithstanding this, however, the assembly refused to increase them. As it was a period of peace practically nothing was done to make the force more efficient. In 1740 it still consisted of only two regiments, but on muster days only a few men appeared as the fine for non-appearance was too low. Although the amount of the fine was later raised, it was never high enough to practically compel compliance. This was a frequent matter of complaint. Under Belcher's successor, a number of new regiments were formed and the efficiency of the militia restored. Owing to the exigencies of war the greater part of the militia then received their training in the school of experience, having seen active service at the front. The result was greater efficiency, experienced officers and better trained men. To correspond with the growth of the province, the number of regiments was increased until there were at last ten, one of which was a cavalry regiment. After the close of hostilities, the militia began to deteriorate, but fortunately the governor's successor in office was fond of display and took great delight in attending regimental musters. The efficiency of the force, therefore, was a matter which received special attention. The number of

regiments was also increased to twelve, while in 1773 for the first time the offices of both brigadier general and major general were filled.[1] Throughout the colonial period, the question of preserving proper discipline was a very difficult one and during the various intercolonial wars commanding officers bitterly complained about the lax discipline, and the great number of cases of desertion.

To prevent an enemy from sailing up the Piscataqua river from the ocean and attacking Portsmouth and the other settlements on the banks of that stream and its tributaries the mouth of the river was fortified. At this point was erected the only fort in the province. As it was not, however, constructed of lasting materials, it needed constant attention, for it quickly fell into a state of decay. Governor after governor urgently and repeatedly pressed the assembly to keep it in proper repair, but except in time of war when the exigencies of the occasion and reasons of safety practically forced the assembly to authorize such repairs to be made as would make it reasonably secure in case of attack, the fort was generally in such a decayed and dilapidated condition that it could easily have been captured if suddenly attacked. On several occasions one of the royal engineers assisted in putting it in a proper posture of defence while several times the Crown supplied it with cannon, shot and other stores of war. As the settlements extended westward, a few so-called forts, or rather blockhouses, were erected in the interior.[2]

[1] *Provincial Papers,* vol. iv, p. 533; vol. v, p. 12. *Adjutant General's Report,* 1866, vol. ii, pp. 52, 258 *passim.*. Farmer and Moore's *Collections,* vol. i, p. 64.

[2] For the condition of the fort at different times and the stores of war it contained see *Provincial Papers,* vol. ii, pp. 72, 73, 84, 91, 94, 103, 117, 120, 124, 183, 230, 239, 245; vol. iii, pp. 66, 67, 251, 255, 311; vol. iv, pp. 64, 240, 247, 354, 378, 446, 533, 580, 583, 648, 771, 772; vol. v,

Although the settlers in southern New England had early been involved both in disputes and in war with the Indians, the inhabitants of the territory embraced within the limits of Mason's grant fortunately remained on friendly terms with the natives and, in fact, continued to hold peaceful intercourse with them until after the outbreak of King Philip's war. Then, while the people in that part of New England south of the Merrimac were making every effort to crush the savages who were in revolt in that section, and the settlers in the region north of the Piscataqua were engaged in protecting themselves against the Indians in that quarter, some of the tawny warriors suddenly entered New Hampshire and began committing depredations there. The Indians, however, living in New Hampshire took no part in these marauding expeditions and did not assume a hostile attitude until the fall of 1676. Then it so happened that, at a gathering of the New Hampshire Indians held at Major Waldron's invitation near his home in Dover, some Indians were present who had taken part in the war on Philip's side. Just then some Massachusetts troops on their way to Maine arrived in the town. When their officers, who had orders to apprehend such of the southern Indians as they could find, learned that some of the latter were present, they wanted to seize them immediately, but Waldron, perceiving that such a course would only lead to bloodshed, suggested that the same result could be obtained by a resort to stratagem. Accordingly, he proposed that the Indians should engage in a sham fight with the whites after the English fashion. To this proposal the savages readily agreed, but soon afterwards they had rea-

pp. 12, 21; vol. vii, pp. 270 *passim;* Belknap, *History of New Hampshire passim;* Adjutant General's Report, 1866, vol. ii *passim.*. In time of peace the fort was garrisoned by a captain and a few men. It was the only place in the province where a garrison was always maintained.

son to regret their action, for the English so managed the affair that practically all of them were captured without blood being shed. Although the New Hampshire Indians were immediately released, neither they nor the rest of their tribe ever forgave Waldron for what in their opinion was a breach of faith and an act of treachery on his part. Soon afterwards they became hostile. Although occasional raids were made upon the outlying settlements, the inhabitants of New Hampshire during this war suffered but little in comparison with what the people endured both north and south of them. Nevertheless, on account of the character of the struggle and the tactics of the enemy, the expense incurred for purposes of defence was quite heavy. Consequently, when a treaty was concluded with the Indians in the spring of 1678, the people felt greatly relieved. A little more than a decade then passed, during which the settlers enjoyed the blessings of peace. Then the war-whoop was again heard along the Piscataqua. Although nearly thirteen years had elapsed since the sham fight, the Indians had by no means forgotten it. In fact, they had long been thirsting for revenge and been patiently waiting for a favorable opportunity to wreck vengeance upon those concerned in it, though all the time keeping on friendly terms with them. At last, in June, 1689, the time appeared ripe for the execution of the design they had in mind. Accordingly, on the twenty-seventh of that month, squaws applied at each of the five garrisons in that part of Dover, known as Cocheco, and asked for permission to stay there for the night. Being admitted into all but one of the garrisons, they patiently waited until the households had retired to rest when, all being quiet, they opened the gates and gave the signal to the Indians lurking without. Immediately the latter rushed in and began their deadly work. As Waldron was the particular object of their vengeance, their attack upon

him was the most cruel and revolting, although elsewhere the work was bloody enough. By the time it was all over no less than twenty-three were killed and twenty-nine more held captive, while only one garrison of the five still bade defiance to the foe. Thus began in New Hampshire a period of hostilities which continued with hardly an interval of peace for more than a score of years.

Although the struggle at first was purely a local one with the Indians, it soon assumed larger proportions, for France and England became involved in war. And so throughout the colonial period it always happened that whenever the two countries waged war against one another, their colonies on this side of the Atlantic invariably became participants in the struggle, even though the causes which produced the war did not actually concern them. With the opening, therefore, of King William's war in 1689, the colonies entered upon a new era. With that year a critical period in their history began which lasted until 1763. During that time, England and France declared war against each other four times. In America these wars are generally known as King William's War, 1689-97, Queen Anne's War, 1702-13, King George's War, 1744-48, and the French and Indian War, 1754-63. The first was brought to a close by the treaty of Ryswick, the second by the treaty of Utrecht, the third by the treaty of Aix-la-Chapelle and the fourth by the treaty of Paris. Although three of the wars were primarily European contests, so far as the main objects aimed at and the principal interests involved were concerned, nevertheless each contributed something towards the solution of the problem which confronted the American colonies. Moreover, with the extension of the English settlements westward, the necessity of driving the French from Canada became more and more urgent. In fact, it was generally recognized that their expulsion

was the only practical method of securing for the continent a firm and lasting peace. At last the end sought was, indeed, attained but it was only after many sacrifices and through the persistent and continued efforts of both the mother country and her colonies for several successive years that the goal was finally reached. As a result the English flag waved in triumph over the continent from the Atlantic seaboard to the banks of the Mississippi. The barrier which had prevented the rapid extension of the colonies westward was removed and the French were practically eliminated as a factor in the further development of North America. The colonies were no longer menaced by a foe in their rear while the Indians, deprived of their allies, were soon made to realize that they must remain on peaceful terms with the victors. Moreover, England's pre-eminence upon the high seas and her commanding position among the nations of Europe, seemed to be a guarantee of peace for many years to come. Reasonably secure, therefore, from attack, the colonies then found themselves amid more favorable surroundings than ever before. On every side the horizon appeared clear and unclouded and from all appearances nothing was likely to hinder their rapid development. In fact, their future seemed to be particularly bright.

During the period from 1689 to 1763, New Hampshire engaged in five wars. Of these the first two and the last two were with both the French and the Indians while the third was with the Indians alone, although French influence was largely responsible for it and was exerted throughout the struggle.[1] For the greater part of this period New

[1] This war is generally known as the Fourth Indian War or Lovewell's War. It began in a sporadic way in 1721 and continued until 1725. As a result of it the power of the Norridgewocks was completely broken, their principal village destroyed and Rale, their spiritual ad-

Hampshire, like the other colonies, kept on the defensive. Sometimes, however, expeditions were sent into the interior not only for the purpose of surprising and killing the Indians but with the view of breaking up their settlements there and destroying their planting grounds. Occasionally, too, the province also participated in various expeditions which were sent into French territory, but it was only during the last inter-colonial war that any sustained efforts were made to carry the war into the enemy's country.

As a means of defending themselves against the onslaughts of the enemy, the inhabitants found the so-called "garrisons" the best protection. These were dwelling houses, the sides of which were very thick and solid so that bullets could not go through them. Sometimes, where the building was two stories high, the upper one projected over the lower, so that the inmates could with greater safety shoot at those who attempted to batter down the doors or set fire to the place. At various points the walls were perforated with loop-holes through which the enemy could be seen and fired upon. In some cases flankers were built in the corners for use as lookouts, while occasionally a sentry box was placed on the roof for the same purpose. As an additional protection, the houses were generally surrounded by a high-picket fence or palisade. Although some of these houses were specially constructed to serve as garrisons, often, in cases of emergency, ordinary

viser, slain, while the Penobscots and the Pequawkets also suffered considerably. The other wars have already been named. For conferences held and treaties made with the Indians, see *Provincial Papers*, vol. ii, pp. 110, 299, 319, 366, 403, 644, 656, 693, 694, 708, 731, 743, 787; vol. iii, pp. 239, 543, 644, 693; vol. iv, pp. 190, 254, 461; vol. v, pp. 127, 133; also *passim*. Belknap, *History of New Hampshire, passim*. Drake, *Border Wars of New England*, pp. 69, 93, 105, 136, 150, 208, 289, 293. Penhallow, *Indian Wars, passim*.

dwelling places were strengthened and made fit for such service. As the people lived in open villages and not in fortified towns, this method of defence presented itself as the only practicable one under the circumstances. The weak feature however of such a system was that it involved the abandonment of the other houses in the settlement. Though rude and homely, these structures proved to be veritable havens of refuge for the inhabitants in time of danger, and, when properly and vigorously defended and all the necessary precautions were taken, they seldom fell into the hands of the foe. When the Indians were threatening the frontier or danger was scented, the settlers abandoned their homes and sought protection within the garrisons. Watch and ward was appointed and everything was done to guard against surprise. To give warning of the enemy's approach scouting parties were kept out in the woods and at the heads of the rivers, while detachments of cavalry patrolled the roads connecting the frontier settlements. Although the stretches of primeval forest which extended, unbroken by any clearings, from one settlement to another securely covered the movements of the enemy and enabled them to elude the scouting parties, still the latter's work was not in vain, for by constantly scouring the woods on the frontier and by keeping up steady communication between the straggling settlements along the border, the enemy were prevented from assembling in large numbers in close proximity to the settlements. When necessary additional men were impressed to serve in the more exposed garrisons and sometimes detachments of the militia were sent into the threatened region. As the Indians were seldom seen before they struck the blow contemplated, when the report of their guns or the sound of the war-whoop alone revealed their presence, the suspense in which the people were held for days and even months at a time may

well be imagined. The news that the savages were killing settlers every now and then at different places in Massachusetts and Maine greatly increased the uneasiness because no one knew when or where the Indians would next appear. And, although little or no damage might be inflicted upon the settlements during an entire season, still the expenses incurred for defence were heavy. Often small roving bands prowling through the forests and lurking near the outskirts of the villages kept the frontier in a continual state of alarm. At times the scalping parties were so numerous that a person could not cross the threshold of a garrison without being fired upon by the Indians, who often lay concealed behind rocks, bushes or tree-trunks patiently waiting for just such an opportunity. At such times all work in the fields had to be abandoned, the inhabitants being closely confined to the garrisons until it was safer to venture out. Even then, however, they went abroad armed and while the men worked in the fields or in the woods sentinels were kept posted close by to watch for signs of the enemy. When, at last, there was reason to believe that the enemy had drawn off, the people returned to their houses every morning and worked on their own places until late in the afternoon, when they again sought the protection of the garrisons for the night. This they continued to do until all danger seemed to be passed. After a summer thus spent, the approach of cold weather was hailed with delight, for it gave the borderers some assurance of relief, inasmuch as the Indians at that season usually retired to their winter quarters. During the long, cold and dreary winter that followed, the thing most dreaded was an attack from the bands which under French officers were occasionally sent forth from Canada to pounce upon the more exposed settlements. Notwithstanding the fact that the inhabitants realized the danger to which they

were constantly exposed, nevertheless, the long periods of confinement and the constant exposure to danger apparently made them grow at times indifferent and careless. Far too often they exposed themselves unnecessarily and did not take the proper precautions. As a result many lives were lost which could have been saved. Although the loss in killed, wounded and captured during a season might be very small, still it was severely felt, particularly during the earlier wars, for then the province was but sparsely settled and every town was not only within easy reach of the enemy but needed practically every man for its own defence. Fortunately during these wars, Massachusetts soldiers were often posted in the province for considerable periods of time.

The suddenness with which the enemy struck their blows, the manner in which they went about their bloody work and the destruction which they often wrought has in a measure been already indicated and may be more fully illustrated by referring to what happened in 1690 and 1694. In 1690 occurred the attack on Salmon Falls. Since the preceding fall the inhabitants had been living in apparent security. The enemy had been neither seen nor heard of near the settlements and none was expected, for up to that time Indian raids upon the border during the winter season were practically unknown. When, therefore, in midwinter news was received that the village of Schenectady in New York had been surprised and a large number of its inhabitants massacred, a thrill of horror swept through the border settlements for no one knew when or where the next blow would be struck. This disaster, of course, served to put people on their guard, but as one week after another passed without any further mischief being done they began to grow less careful. Such was the situation when a few Frenchmen and a band of Indians approached the straggling

settlement of Salmon Falls toward the close of March. Finding no watch kept, they decided to make an attack upon it immediately. Just as dawn was breaking, the assault began simultaneously at several different points. Although surprised, the terror-stricken inhabitants displayed rare courage but were finally overcome. Some thirty were killed, and more than fifty, consisting mainly of women and children, were taken captive. After pillaging and then setting fire to the garrisons and undefended houses, wantonly killing the cattle and destroying such other property as they could in their haste, the assailants withdrew to the recesses of the forest with their plunder and prisoners. An alarm being promptly given, a force of men was quickly collected from the neighboring settlements and sent off in pursuit of the foe. Coming upon the latter in the afternoon, they quickly forced them into a fight which continued until darkness put an end to the conflict, when the pursuers decided to withdraw, having inflicted a slight loss upon the enemy and having incurred a similar one themselves. For some weeks after this all was quiet. Then the French and Indians suddenly appeared at Casco Bay in Maine where similar scenes of slaughter and destruction were witnessed. Fearing other attacks the people in the various garrisons east of Wells retired for protection to the fort at the latter place, while the Indians began to move westward. Soon they appeared in New Hampshire, attacking the scattered dwellings at Fox Point in Newington, where they set several houses on fire and killed and captured a score of people. A relief party, being sent out in pursuit of the retreating savages, soon sighted the latter and recovered a few of the captives and a part of the plunder. Some weeks later, while engaged in mowing a field near Lamprey river, eight people were killed and one captured, while the very next day an

attack was made on a fortified house in Exeter which was only saved by the timely arrival of a reinforcement. The following day some troops, engaged in scouting the frontier, discovered an Indian track which they pursued until they came up to the enemy at Wheelwright's Pond in Lee, where a fierce engagement took place, resulting in the slaughter of fifteen of the pursuers and the wounding of several others. Turning westward the Indians proceeded along the border as far as Amesbury in Massachusetts, killing at different points on the way no less than forty people in a single week. Although other attacks were expected, none occurred in New Hampshire during that year. Quiet again reigned on the border and when winter set in the inhabitants gave a sigh of relief.

In the summer of 1694, the attack on Oyster river occurred. For almost a year prior to that time there had been no hostilities with the Indians, for a treaty of peace had been concluded with them the previous August. As far as the French and English colonies were concerned, however, it was still a period of war. Realizing that a continuance of the peace would result in defeating their policy in the East, the French set their agents to work among the savages and in due time they succeeded in getting a considerable number of them to take up the hatchet again. This accomplished, they singled out the scattered village of Oyster river as the first object of attack. Then a few Indians were apparently sent forward to obtain information about the place. Although they were seen lurking about the neighborhood, their presence caused little uneasiness, for they always disappeared without doing mischief. At last a band of between 200 and 300 Indians, commanded by a French officer and accompanied by a Jesuit missionary, cautiously advanced to the falls of the river. This point they reached undiscovered on the evening of July

17th. Although there were enough garrison houses in the village to shelter all the inhabitants, they were occupied at this time in most cases only by their owners and their families, for, as no attack was expected, most of the settlers slept in their own defenceless homes and only a loose watch was kept. When evening came and the inhabitants, unconscious of the awful calamity that was to befall the place, had retired to rest, the savages quietly formed into two divisions—one for each side of the stream. Then, in order that all the houses of the straggling settlement which extended for several miles on both sides of the river might be effectually covered, each division soon afterwards broke up into many small bands, each of which was ordered to take up a position near some house and wait patiently under cover until a gun was fired as the signal for action. Fortunately for some of the settlers, one of their number had planned to go on a journey early the next morning. Having risen much earlier than usual, he started to leave the house; but just as he came out of the door he was fired upon and killed. Although some of the savages had not yet reached the places assigned them, the slaughter began wherever they were ready. Quickly breaking into the unprotected houses, the Indians either massacred or made most of the inmates prisoners, after which they deliberately set fire to the premises. Only a few eluded their vigilance and escaped to places of safety. In their attack upon the garrisons, the enemy was not so successful. Of the twelve garrison houses in the settlement, three were abandoned by the occupants, most of whom succeeded in effecting their escape, and two were taken without a struggle, most of the inmates being murdered, while the remaining seven were successfully defended. When, at last, the Indians withdrew, at least twenty houses were in ashes, nearly one hundred of the inhabitants lay dead and almost thirty others

were in the hands of the assailants. Soon afterwards a small party crossed the Piscataqua and killed Mrs. Ursula Cutt and three of her laborers as they were haymaking in a field situated but two miles from Portsmouth, while a much larger party marched westward and fell upon the settlements near Groton in Massachusetts, killing and capturing some forty persons. From the French point of view, this blow accomplished its purpose, for it broke off all talk of peace between the Indians and the English. To such attacks as these the inhabitants were always exposed.

To strike without giving a moment's warning and then make good their escape before a relief party could be sent in pursuit of them; to shoot down the people as they came out of their houses, or as they were at work in the fields or woods, or as they journeyed along the highways to some neighbor's house or to the next village, on business or pleasure bent, such was the sort of work in which the Indians took the greatest delight, such was the course which the French believed would best accomplish their purpose, and such was what the settler had to guard against for a great many years.

From first to last the colonists labored under many disadvantages. Their villages, unlike those of the French and Indians, were comparatively easy of access, for most of the larger streams had their sources in the hills and mountains near the Canadian border and flowed in the main in a south-easterly direction through the English settlements. Then, too, the inhabitants did not live in fortified towns or compact villages but in open and straggling settlements in which only a few of the houses were so constructed or fortified as to withstand an attack. Moreover, they were scattered very irregularly along a very extended frontier. Usually, too, they were not within supporting distances of one another, often being separated by great stretches of the

primeval forest which enabled the enemy to strike and disappear before effective resistance could be made. Moreover, back of the frontier, stretching as far as the French settlements in Canada was nothing but a vast unbroken wilderness inhabited only by the Indians who formed a sort of barrier between the French and English colonies. In New England, however, these natives of the forest generally sided with the French, for, although they appeared anxious to keep on friendly terms with the English, chiefly because they could obtain cheaper and better goods from them, the influence which the French agents and Jesuit missionaries wielded over them was so great that at the critical moment they were invariably persuaded to take up the hatchet against the settlers. Then again, although the Indians always knew where to find the English, it was a far more difficult matter for the latter to find the redskins, and even if they did come upon one of their villages, the damage done was usually trifling, amounting in most cases to nothing more than the destruction of their wigwams and cornfields and the killing perhaps of a few stragglers. The havoc wrought by the savages, however, was of a far more serious nature. Moreover, on account of their peculiar tactics, the loss which the tawny warriors sustained in their border raids was inconsiderable compared with the damage they inflicted and the number they killed, wounded or captured. In fact, it has been stated that, if the amount of money spent for purposes of defence be divided by the number of Indians slain, it will be found that every Indian scalp cost the country £1000.

As for the captives, their lot was at best a hard one, for to fall into the hands of the foe almost always meant privation and suffering. As they were regarded as the property of the warriors in whose possession they were, each had a market value and could be sold like any other piece of

property. And fortunate it was that this was the case, for it undoubtedly saved many from a far worse fate. The treatment of all, however, was by no means the same. Some had kind and considerate masters, others cruel and surly ones. Generally speaking, those captives fared best who fell in with the Indians' ways and willingly did the latter's bidding. Once the settlements were left behind, the raiders usually broke up into small parties, the better to subsist by hunting and the better to elude pursuit. Often, however, during the long and weary march that followed food became scarce and frequently hunger and starvation stared both captor and captive in the face. Often, too, many met death on the way, for, when one's strength was almost spent and his inability to keep up with the party became apparent a blow from the hatchet quickly put an end to his sufferings. Cruel as this may seem, it was really mercy in disguise, for it saved the afflicted from a slow and lingering death in the solitudes of the forest. What it meant to travel several hundred miles, as many actually did, "half naked and barefooted through pathless deserts, over craggy mountains and across deep swamps through frost, rain and snow, exposed by day and night to the inclemency of the weather and in summer to the venomous stings of those numberless insects in which the woods abounded," can at best be only imperfectly described. The mental anguish however which they suffered can only be imagined.

Although the people of New Hampshire were practically forced by circumstances to keep on the defensive, they fully realized the advantages which would accrue to them, if the Indians could only be kept at a greater distance from the frontier. Accordingly, expeditions were from time to time sent to the lakes and streams in the interior where it was most likely the savages could be found. By laying waste the latter's planting grounds and breaking up their settle-

ments in that region, the settlers virtually compelled them to seek places of greater safety further inland. To a certain extent this served to give some relief to the more exposed hamlets on the border, for the further away the Indians were from a base of supplies, the less likely they were to linger on the frontier when they made their raids on the English settlements. Expeditions of a similar character were also undertaken by Massachusetts against the Indians who inhabited the upper reaches of the rivers in Maine, for they were not only numerous and troublesome, being under French influence, but so situated as to be within easy reach of the settlements on the coast. In many of these enterprises, New Hampshire for obvious reasons took part. If the success of these expeditions is to be determined by the number of savages who were killed and captured, most of them must be regarded as failures, for sometimes not a single Indian would be sighted during the entire journey; at other times only a few would be killed or taken, while it was but seldom that the savages were surprised or lost any considerable number. When considered, however, from other points of view, these expeditions must be regarded as productive of much good. As the red man's planting grounds were invariably laid waste whenever seen and his stored corn destroyed whenever found, food often became scarce. Famine sometimes set in, and many deaths naturally followed. Moreover, as the Indians were inclined to go further inland when pursued, these undertakings undoubtedly saved the border from many a raid. A few of these enterprises, however, were unqualified successes, so much so that in some cases the tribe attacked was never able to recover from the blow it received. Although exposure, disease and starvation probably did more to thin the ranks of the red men than any thing else, it was expeditions of this character which finally broke the power of the

Indians in the regions mentioned. At last some of the tribes were so reduced in numbers that they united with their neighbors for protection, while others withdrew entirely from their old haunts and joined the tribes in French territory. Thus it happened that, by the close of the first quarter of the eighteenth century, the Indians actually living within the limits of New Hampshire were so few that they were never a source of trouble afterwards.

In New Hampshire, as in other exposed sections of the country, the state of public opinion was such that any method of ridding the frontier of the murdering savage was considered justifiable. Hence it is not surprising that the legislature offered bounties to volunteers for every scalp or prisoner taken.[1] Sometimes singly, but more often in parties volunteers ranged the woods in all directions and penetrated great distances into the interior in search of the foe. Usually, however, they returned empty-handed, and it was but seldom that many Indians were seen or many scalps and prisoners taken. In their quest for the savage most of them took very desperate chances; many suffered untold hardships; and some performed almost incredible deeds of valor. During the last war with France, ranging parties such as these did service as scouts for the British generals. In fact the rangers of the Rogers brothers became famous for their daring deeds and highly successful exploits. Their crowning achievement was the destruction of the Indian village of St. Francis.

Although people realized that border raids could be prevented and a lasting peace with the Indians be secured by bringing Canada under the English flag, still the difficul-

[1] For the amount of some of these bounties see *Provincial Papers*, vol. ii, pp. 418, 419, 421; vol. v, pp. 410, 439, 440, 491, 587, 802, 912 *passim*.

ties in the way were such that up to the time of the last inter-colonial war only a few attempts were made to bring about so desirable an end. For any attempt to undertake the conquest of Canada necessitated the expenditure of a large sum of money and the equipment and dispatch of a considerable number of men. On account, also, of the distance to be covered, provisions for several months had to be taken along. Moreover, united action on the part of at least several colonies was necessary, as no colony was then sufficiently strong or wealthy enough to accomplish the task alone. To get several colonies to co-operate in such an enterprise, however, was under the circumstances no easy matter, and, even when an agreement was reached, governors generally met with many difficulties at the hands of their respective assemblies while the officers appointed to command the joint forces encountered many obstacles which resulted in such exasperating and vexatious delays that the success of the expedition was often seriously jeopardized before the enemy's forces were sighted or its territory invaded. Furthermore, except in one instance, the assistance of the home government was always regarded as essential to success. Owing, however, to the complexion of affairs at home and the many demands which the wars on the continent made upon her, England, during the first three inter-colonial wars, was not able to pay much attention to what was going on in America. Consequently the colonies were usually left to care for themselves and it was only during the last war with France that any persistent and determined effort was made to drive the French from Canada. By the people of New England, the possession of the French territory on the coast to the east of them was also regarded as important, for not only did its harbors shelter the privateers and pirates who sometimes infested the adjacent seas, preying upon those engaged in the fish-

eries, but they could be used also as a convenient rendezvous for expeditions sent against the coast towns.

In 1690[1] expeditions were undertaken against both Canada and Acadia. In the first, four colonies participated; in the second, only one. The former was a complete failure; the latter a distinct success. Port Royal passed into the hands of the English and with it went the rest of Acadia, for the captured fortress was the only place of strength in the province. Later, however, it passed again into the possession of its former owners. In 1707, another expedition was sent to capture the fortress. This time all the New England governments were invited to take part in the undertaking. Connecticut alone refused to participate; New Hampshire furnished two companies, Rhode Island eighty men and Massachusetts the balance. In all two regiments were raised. Although the prospects of success seemed bright, petty jealousies and dissensions among the officers, combined with bad judgment and poor leadership, wrecked the enterprise so that nothing was accomplished.[2] Early in 1709, word was received that the home government intended, with the help of the colonies, to make a combined land and naval attack upon Canada. Accordingly, Connecticut, New York, New Jersey and Pennsylvania were called upon to furnish 1600 men who were to invade Canada by way of Lake Champlain, while Massachusetts, Rhode Island and New Hampshire were asked to raise 1200 to sail with the fleet which was to be sent from England. New Hampshire's quota was fixed at 100. In

[1] For details concerning this and the other expeditions made, see Belknap, *History of New Hampshire;* Drake, *Border Wars of New England;* Parkman's *Count Frontenac, Half Century of Conflict* and *Montcalm and Wolf.* For many of the muster rolls of the New Hampshire troops see Adjutant General's Report, 1866, vol. ii.

[2] *Provincial Papers,* vol. ii, pp. 496, 505, 506; vol. iii, pp. 361 *passim.*

due time Governor Dudley called upon the assembly to raise the men, provide two transports for their transportation and furnish sufficient subsistence to last four months from the time the fleet got under way. As the province at the time was in an exhausted and impoverished condition, owing to the war which was then raging, and those who had served in previous campaigns had not been fairly treated or promptly paid, considerable difficulty was experienced both in procuring the necessary funds and in raising the requisite number of men, and it was not until one assembly had been dissolved and another summoned that the necessary money was voted.[1] At length, the preparations were completed and the men anxiously awaited the arrival of the English fleet. Though daily expected, month after month passed without any tidings being received as to its whereabouts. When, at last, the season was too far advanced to permit of a movement on Canada a proposal was made that the New England colonies should proceed to attack Port Royal, but the captains of the British frigates then in New York and Boston refused to participate on the score of the late season and the want of orders. Finally, intelligence was received that the armament promised had been sent to Portugal.

Notwithstanding the fact that a vast sum of money, considering the impoverished condition of the more exposed colonies, had been spent in forwarding the expedition, representations were made to the home government to revive the enterprise the next season. After considering the matter for some time, however, the ministry resolved upon the reduction of Port Royal only. Again, New Hampshire's quota was 100 men. This time, to encourage volunteers to enlist, each was given a coat worth thirty shillings and one

[1] *Provincial Papers*, vol. ii, pp. 593, 595; vol. iii, pp. 385 to 399; Belknap, *History of New Hampshire*, vol. i, p. 348.

month's wages before embarking and promised freedom from impressment for three years, scouting near the garrison to which each belonged and watching and warding alone excepted. In all four regiments were raised by the New England colonies. These, with a regiment of royal marines, gave an effective fighting force of about 2000 men. Before such a force, aided as it was by a squadron of warships, Port Royal easily fell. The place passed definitely under the English flag and was named, in honor of the queen, Annapolis.[1] Representations were then made to the home government to complete the work by undertaking an expedition against Canada. The New Hampshire assembly joined in these representations, sent an address to the queen to the same effect and directed its agent in London to press the matter at Court. As a result, a combined land and naval attack on Canada was authorized and orders were issued, requiring all the colonies as far south as Pennsylvania to get ready their quotas of men and provisions. As before, New Hampshire was called upon to contribute 100 men. Although the assembly claimed that the province should have been asked to furnish only eighty, nevertheless, it voted to raise ninety men, and furnish besides one transport and three months' provisions, but when the members found that the governor would not agree to this and insisted upon having the full quota, two transports and sufficient subsistence for 126 days, besides such provisions as were necessary for the men before embarkation, they reconsidered their vote and acceded to his excellency's wishes.[2] By the end of July all was ready. The New England troops, 1500 strong, formed two regiments under the command of Colonels Vetch and Walton, the latter a New

[1] *Provincial Papers,* vol. iii, pp. 420, 437, 445, 448, 453.

[2] *Provincial Papers,* vol. iii, pp. 453, 483, 484, 490, 491 *passim.*

Hampshire man. Counting those who had been brought over from England, nearly 7000 soldiers sailed for Canada. Such a force, aided as it was by a strong fleet of war ships, in fact the most formidable squadron that had ever been sent from the Old World to take part in any war like enterprise in the New, was quite equal to the task of reducing Quebec. After leaving the coast, all went well until the vessels had advanced a considerable distance up the St. Lawrence when, the weather becoming thick and foggy, they lost their bearings and eight transports were wrecked, causing the loss of nearly 1000 men. Although there was a strong force left and the squadron was still intact, a council of war decided against proceeding further up the stream. As a result the expedition broke up without striking a single blow. When the news of the disaster reached Colonel Nicholson, who was marching up from Albany on his way to Montreal, he concluded to disband his troops, as there was no chance of his succeeding against the combined military forces of Canada.[1]

As the prospects of success were particularly bright when the fleet left the New England coast, the news of the disaster was a bitter pill for the people to swallow. The disappointment felt on every side was very keen. According to one writer the financial loss was so great that it affected the country for seven years afterwards. Though drained and weakened by a long war, the more exposed provinces had spent money with a lavish hand, fully expecting that it would result in the capture of Canada. Downcast and impoverished as the people were, they were still desirous of having the expedition revived the following year and in

[1] *Provincial Papers,* vol. ii, p. 629; Penhallow, *Indian Wars,* pp. 68 to 71. The fleet was in charge of Admiral Walker; the troops on board under command of Brig.-Gen. Hill.

fact made representations home to that effect. The New Hampshire assembly, in its address to the queen, prayed some abatement in its quota on the ground that one half of the men were daily employed against the enemy and at least one-third of their young men went abroad every year. Its agent in England was also instructed to ask for some abatement in the province quota and directed to lay before the queen the "sorrowful" state of the province, which consisted of no more than one thousand fighting men, living in six or seven open villages "which were always exposed to the inroads of the French and Indians and always upon their guard and scouting." Notwithstanding these representations, however, the expedition was not revived.[1]

Although the treaty of Utrecht, which was concluded in 1713, confirmed England in possession of Acadia, France continued to exercise considerable influence over the inhabitants there. Moreover, her position in the east, though temporarily weakened, was such that it was destined again to be a menace to the coast towns of New England and to the fisheries in which many of the inhabitants were engaged, for she still held the island of Cape Breton which was situated in a very commanding position just to the northeast of Acadia. Some years after the close of the war, she began to fortify its principal harbor, which in the course of time became the Gibraltar of America.[2] Not only did it command the main entrance to Canada by way of the sea but it was used as a naval station and could be made the base from which the New England coast towns could be easily attacked. Moreover, it furnished a safe retreat to privateers. For these reasons, Massachusetts, during King George's War, deter-

[1] *Provincial Papers*, vol. iii, pp. 507, 509, 633.

[2] In honor of the French king the place was called Louisburg.

mined to capture it. Accordingly, all the governments as far south as Pennsylvania were invited to co-operate in the undertaking, but only those east of New York accepted the invitation. Although the New Hampshire assembly agreed at first to raise only 250 men, it decided later to increase the number to 350 and voted to give them the same encouragement as Massachusetts gave her men. Then Governor Shirley, of the latter province, asked Governor Wentworth to raise an additional 150 men to be aggregated to the New Hampshire quota, but kept in the pay of the Boston government. In all, therefore, 500 men were to be raised in New Hampshire. Provisions for four months were speedily provided and transports were promptly secured, one of which was fitted out with guns taken from the fort. Massachusetts voted 3000 men and Connecticut 500, while Rhode Island furnished a sloop of war. Upon reaching the appointed rendezvous, the colonial transports were joined by Commodore Warren of the British navy, who had come up from Antigua with a small squadron which was soon reinforced by some men-of-war from England and by the capture of a French warship. While the fleet closely invested the harbor at Louisburg, the land forces vigorously pressed forward the siege operations. To the surprise of many, the fortress, on June 17th, 1745, only a month and a half after the beginning of the siege, surrendered. Both in Old and in New England, the tidings were received with great manifestations of joy and in New Hampshire the assembly voted to spend £25 for such public entertainment as the governor should think fit and proper for the occasion.[1]

Believing that the troops would be in service for a longer

[1] *Provincial Papers*, vol. v, pp. 266, 272, 279, 282, 290, 291, 293, 359, 740, 743, 766, 932, 948. For list of New Hampshire men in the expedition see *ibid.*, vol. v, pp. 372, 943. Compare also Adjutant General's Report, 1866, vol. ii, p. 63.

period than had been provided for, the assembly earlier in the month had empowered the committee in charge of the arrangements connected with the expedition to provide provisions and stores for another month and authorized it also to dispatch such clothing to the men as was needed. Moreover, since it had been strongly represented that more troops would be required for the successful prosecution of the siege, the assembly had also agreed to raise 100 additional volunteers, besides making provision for the support of the men already on the ground for such further time as might be deemed necessary.[1] After the fortress surrendered, some of the troops who could be spared were gradually withdrawn, Of the New Hampshire quota, 169 had left the place by the beginning of September, many of them, according to Governor Wentworth, "landing in the province in a manner naked and all must suppose destitute of money to carry them to their respective habitations." For this reason he pressed the assembly to pay them off promptly and recommended "an augmentation of their wages or an additional premium as a reward for their faithful and hard service," for, "if something of this nature is not done, few," said he, "will be able with their whole wages to put themselves in the same state with respect to their clothing as when they entered into the service." As the arrival of troops from England that season to garrison the place was hardly expected it devolved on the New England colonies to furnish enough soldiers to render the fortress reasonably secure for the winter. Again New Hampshire showed her willingness to bear her share of the expense by voting to subsist 130 men for eight months and by agreeing to support all above that

[1] *Provincial Papers*, vol. v, pp. 329, 334, 369, 372, 758, 946, 948. Writing to Gov. Wentworth on June 15th, two days before the surrender, Gov. Shirley said, "This is the very crisis of the fate of New England, particularly of this and your province."

number who should be prevented from returning home pursuant to the assembly's order. Upon the arrival of some troops from England the following spring, the colonial forces were permitted to return home.[1]

On the 3d of June, 1746, the legislature was convened in special session to consider the king's commands relative to an expedition for the reduction of Canada. According to the royal orders, the colonies were expected to raise as many troops as the time at hand permitted, the men so enlisting to be borne in the king's pay and furnished with arms and clothing at the crown's expense. Fully realizing the importance of the enterprise, the two houses readily agreed to have as many men enlisted as could be got ready by the last of July, and, to encourage as speedy an enlistment as possible, offered them the same bounty and encouragement as volunteers in Massachusetts received. As the arrival of a squadron and a considerable number of troops was expected from England within a few weeks, every effort was made to push forward the necessary arrangements connected with the expedition; but it was all to no purpose, as the assistance promised never came.[2] When, at last, the season was too far advanced to make an attack on Canada, Governor Shirley proposed to employ the colonial forces in an expedition against Crown Point, but before much could be done the country was startled by the news that a powerful French fleet was on its way across the Atlantic to re-take Louisburg and lay waste the towns on the coast. Immediately attention was focused upon the defences at

[1] *Provincial Papers*, vol. v, pp. 370, 371, 372, 373, 378, 383, 384, 412, 779, 812.

[2] *Provincial Papers*, vol. v, pp. 428, 430, 461, 813, 816, 837. From the records it appears that by August 12th 597 had been enlisted in New Hampshire. The soldiers promised from England were sent on an expedition to Portugal.

home. In New Hampshire the enlisted men were sent to New Castle and set to work repairing the fortifications there. New batteries were also erected and ditches dug across the island. Equal to the occasion, the assembly authorized the governor to enlist or impress fifty able-bodied men to work on the fort for a period of fourteen days and eight days afterwards empowered him to enlist for a similar period if necessary 100 men for the fort and 100 more for scouting purposes on the frontier. Although an attack was daily expected, nothing further was heard of the squadron until the following month, when tidings were received that it had been shattered by storms.[1] The coast, therefore, was safe, but in the interior the Indians had been quite active. As it was now feared that further incursions would be made, the government decided to station some men at Lake Winnepesaukee, where a fort was built and the winter passed. Upon application of the authorities at Annapolis for troops to strengthen the garrison there, which was threatened by the French, Governor Wentworth, upon the council's advice, gave orders for the embarkation of 180 men, but owing, it appears, to the discouragements and misrepresentations of evil-minded people only 128 officers and seamen actually embarked.[2] When peace was finally restored Louisburg, much to the disgust and indignation of the New Englanders, was given back to France.

Peace, however, did not continue for many years, for in 1754 occurred the clash between the French and English in the region west of the Alleghanies, which involved the two in a struggle that resulted in the complete subjuga-

[1] *Provincial Papers,* vol. v, pp. 109, 108, 110, 460, 463, 464, 833, 837, 844. It also appears that a pestilence had broken out on the way over which wrought havoc among the troops on board. Provisions also had become scarce.

[2] *Ibid.,* vol. v, pp. 111, 504, 845, 872.

tion of Canada. The places of great strategic importance, however, which had to be secured before so desirable an end was attained were Fort Duquesne, Niagara, Crown Point, Ticonderoga, Louisburg, and Quebec. Once these were gained, the fate of Canada was sealed. Against these points, therefore, the English directed their operations, and although they met with many reverses they persisted in their efforts until all were in their possession. But this involved many campaigns, the expenditure of much money and the loss of many men while many disappointments were met with, many difficulties encountered and many obstacles overcome.

In March, 1755, Governor Wentworth laid before the assembly Shirley's plan for the erection of a strong fort near the French fortress at Crown Point. As the project met with the legislature's approval, 500 men were voted as New Hampshire's quota of troops.[1] Soon afterwards, however, the authorities decided to make an attack upon Crown Point itself rather than build a fort in such a position as to command it. Although some 3000 colonial troops were encamped near Albany early in July, General Johnson, who had been commissioned by the various governments as commander-in-chief of the expedition, was not ready to advance against the enemy, for he was greatly hampered by the control which the different legislatures exercised over both the men and supplies they sent. For a time, too, no agreement could be reached concerning the amount of artillery and stores which each government was to furnish. Then, too, some of the detachments were not properly equipped for a campaign while others were in need of supplies. Discipline, also, was lax and there was in gen-

[1] *Provincial Papers*, vol. vi, pp. 356, 358, 362, 363, 409, 410. The committee to which the matter was first referred recommended the enlistment of 600 men.

eral a lack of both harmony and co-operation between the different regiments. Difficulties of this kind, commanding officers had to contend with throughout the war. As a result the efficiency of their forces was greatly weakened and the chances of success materially lessened. After innumerable delays the advance began. A fort was built at the Great Carrying Place and a road cut through the woods to Lake George, which was reached by Johnson toward the end of August.[1] Scouts having in the meantime learned that the French were expecting heavy reinforcements, a call was issued to the different colonies for reinforcements. Instead, however, of waiting for the English, Baron Dieskau, the French commander, pushed south and attacked them at the lake, but after a hot fight his force was routed and he himself fatally wounded and made prisoner. Instead of following up his victory, Johnson thought it best under the circumstances to remain where he was[2] and accordingly allowed the French to retreat unpursued. The consequence was that the latter strongly intrenched themselves at Ticonderoga. Meanwhile, Johnson set the reinforcements as they arrived to work building a fort, which he named William Henry. In reply to the call for more troops, New Hampshire sent 300 men under Colonel Gilman, but, as a council of war decided against any farther advance, they were of little service.[3] During the winter the newly erected forts were garrisoned by men provided by the different colonies. For this service New Hampshire furnished about 90 men.

[1] *Provincial Papers,* vol. vi, pp. 415, 429, 435, 439. The fort was called Fort Lyman, later Fort Edward.

[2] *Ibid.* For his reasons see *ibid.,* vol. vi, p. 450.

[3] *Provincial Papers,* vol. iv, pp. 421, 433, 439, 440, 450, 451. At first only 150 men were voted but soon afterwards the assembly increased the number to 300.

Except for Johnson's victory at Lake George and the capture of some French forts in Acadia, the operations which the English had conducted during the season had been unsuccessful. Nothwithstanding this, however, it was resolved to renew the expeditions the following year. When the matter was brought up for consideration early in 1756, the New Hampshire assembly at first agreed to raise 350 men but towards the end of March the representatives consented to increase the number materially. All of the men were to serve for a period not exceeding nine months and to be exempted from all military impresses for one year. None, however, were to be employed south of Albany or west of Schenectady and none were to be arrested during the continuance of the expedition "upon mean process or execution" for a sum less than £50. In addition to their wages a bounty of £5, 5s. was promised each man. Furthermore, to encourage an early enlistment, those enlisting before the 15th of May were to be given a blanket, a hatchet and a knapsack while those who served in the previous campaign and reinlisted were promised half pay from January 1st. In April, the governor was authorized to enlist 60 others to do scout duty between Salmon Falls and Lake George and the agents at Albany were empowered to employ 20 persons to assist in transporting provisions and stores to Lake George. Owing to the many obstacles encountered in raising and dispatching the troops the New Hampshire regiment did not reach the Hudson river till the middle of June.[1] Although an early campaign had been contemplated, innumerable delays occurred so that August was at hand before the colonial troops and the British regulars were ready to advance on Ticonderoga. Then tidings were re-

[1] *Provincial Papers*, vol. vi, pp. 459, 480, 482, 502, 506, 509, 512, 525, 527 *passim*. The regiment was under the command of Col. Meserve. For the scale of wages paid the men see *ibid.*, vol. vi, p. 504.

ceived that Oswego had fallen. Immediately Lord Loudon resolved to act on the defensive and appealed immediately to the various colonies for reinforcements. The latter, however, were not sent either in such numbers or with such speed as was expected. In New Hampshire, the assembly was only willing to raise 100 men, claiming that, as the province had already exerted itself beyond its ability and had extensive frontiers to defend against an enemy that was daily expected, it was not within the power of the government to send a greater number. The reinforcement was finally sent off under Captain Gilman, but it was gone only a short time when the campaign ended, the Earl having decided to make no forward movement that season.[1]

For the next campaign, he desired the New England colonies to raise 4000 men. Although the quota assigned to New Hampshire was regarded as excessive, nevertheless, the assembly agreed to raise immediately the number stipulated. At the Earl's request, 200 of the men were sent to Charlestown on the Connecticut river, which place now passed under the supervision of the king's officers. A little later this detachment was ordered to Fort William Henry, its place being taken by a regiment of Connecticut troops. These acted as scouts until ordered to join the forces in New York. A part of the New Hampshire regiment with a company of artificers and three companies of rangers went to Halifax with Lord Loudon, who contemplated an attack on Louisburg. On account however of the late arrival of the British fleet and the fact that the place was reinforced by a powerful French squadron the attempt to reduce it was abandoned. In the meantime, the French under Montcalm laid siege to Fort William Henry which, after an obstinate and gallant defense, was forced to capitulate. Although the men were granted the honors of war and promised a

[1] *Provincial Papers*, vol. vi, pp. 33, 541, 557 *passim*.

safe conduct to Fort Edward, the Indians pounced upon them before the last man had left the garrison. As the New Hampshire troops were in the rear they suffered severely, no less than 80 out of 200 being either killed or captured.[1]

During the investment and immediately afterwards, General Webb, who was in command of Fort Edward, kept sending expresses to the various colonies for help. In response to his many urgent appeals, the New Hampshire assembly agreed to send 500 of the militia, but stipulated that, if the governor received intelligence that the enemy had drawn off and the assistance was not required, the men should be immediately recalled. If, however, he found that Fort Edward was besieged, such an additional number might be sent as might be thought necessary. Fortunately, the French did not follow up their victory but withdrew to Ticonderoga. In pursuance of General Webb's orders, a force of 250 men was posted for a time at Charlestown.[2]

With one defeat following another, the situation in America was becoming more and more critical. Though the British government had given material assistance to the cause and the colonies more exposed to attack had spent vast sums of money in expectation that the French would be driven back, the latter had actually encroached upon the frontier and threatened still further inroads. Then too, the enthusiasm of the previous campaigns was fast giving way to a spirit of despondency when the elevation of Pitt to office and the subsequent appointment by him of military commanders of the first rank to lead the British forces in America, fired the people with a desire to continue the con-

[1] *Provincial Papers,* vol. vi, pp. 559, 564, 569, 575, 584, 598, 600, 604, 609. Farmer's *Belknap,* I, p. 317.

[2] *Provincial Papers,* vol. vi, pp. 602, 603, 604, 606, 609.

test. In December, 1757, Pitt wrote a circular letter to the New England colonies, New York and New Jersey, calling upon them to furnish at least 20,000 men to join the royal forces, so that Canada might be invaded and the war carried into the enemy's country. As the king agreed to furnish the men with provisions, arms, ammunition, tents, artillery and such boats as might be needed for their transportation, all that the colonies were required to do was to raise, clothe and pay the men, and, that no encouragement might be wanting to make the colonies exert themselves to the utmost, assurance was given that Parliament would be asked to reimburse them for such expenses as each had incurred according as "the active vigor and strenuous efforts of the respective provinces" justly appeared to merit. When, in March, 1758, Wentworth laid the matter before the assembly, the latter agreed to raise 800 men, and as usual promised them the same bounty, encouragement and wages as the Massachusetts men received. Although the governor said the grant fell short of what he had expected, believed it would be impossible to raise the required number by enlistment only and thought it would be advisable, since dispatch was necessary, to raise the men by an equitable draft from the various regiments, still, to prevent any delay, he approved the vote as it stood. His fears, however, were well founded, for on April 18th, he told the assembly that, from what he then knew, he was apprehensive there would be a deficiency of nearly one half in the forces intended for the expedition. He, therefore, urged the members to pass an effectual law which would enable him to complete the levies. At the same time he reminded them that May 10th was the day set for the assembling of the forces at Fort Edward. He also informed them that General Abercrombie pressed hard for an augmentation of the grant to 1000. Thereupon the two houses agreed to have the men im-

pressed, but refused to increase the quota which the province was to furnish. On the 1st of June, Wentworth called attention to the fact that the military fines were so low that the grant of 800 men could not be completed. In reply the representatives declared that as they could find no deficiency in the law, they would not amend it. However, they passed a resolve that the full complement of men should be immediately made up out of the regiments that had not furnished their respective quotas. In New York, too, the delays were many and exasperating. Finally, early in July all was ready and the expedition moved down the lake, but in foolishly attempting to carry the breastworks of Ticonderoga at the point of the bayonet, the troops were repulsed. Although the army was still very formidable, the British general Abercrombie gave up all hope of taking the place and retreated to Lake George. Fortunately, in other parts of the continent the prospects of victory were much brighter, and, before the season closed, Louisburg, Frontenac and Duquesne, three of the great strategic points in the French line of defense, were in the hands of the English.[1]

Anxious both to improve the advantages thus gained and to retrieve the disappointment at Ticonderoga, Pitt called upon the colonies to raise at least as many men for the next campaign as they had raised for the previous one, and, to encourage them to do their utmost, offered them the same inducements as before. When these commands were presented to the assembly for consideration, the committee, to which they were referred, reported in favor of raising 1000 men, but added that, if for any cause that number did not enlist in time, the governor should cause such a number to be drafted out of the militia regiments as would, with

[1] *Provincial Papers*, vol. vi, pp. 655, 657, 659, 660, 662, 668, 670 *et seq.* Col. Hart was in command of the New Hampshire regiment. For the wages of the men and the muster rolls see *ibid.*, pp. 664, 739.

those who voluntarily enlisted, make 800 effective men. It also recommended that a bounty and certain encouragements be given the men who enlisted. Upon the adoption of the report, the men were raised and placed in command of Colonel Zaccheus Lovewell. Some took part in the reduction of Niagara and some participated in the operations which resulted in the capture of Ticonderoga and Crown Point. The crowning achievement of the year, however, was the great victory of the forces under General Wolfe which brought about the surrender of Quebec and effectually sealed the fate of Canada.[1]

As the expedition planned for 1760 required from New Hampshire the same number of men as the one made the previous year, the assembly, in view of "the glorious end proposed and now in prospect," agreed to raise 800 men, "notwithstanding the inability of the province and the seeming impossibility that may attend its being further assistant." To expedite the levies, the men were promised the same bounty, wages, rewards and gratuities as were given the year before while special inducements were offered those who served in the previous campaign and reenlisted. Later, other encouragement was voted the men. Instead of following the old route to Albany, the regiment, when ready to move west, was set to work cutting a road through the woods from the Connecticut river towards Crown Point, to connect with one already built from Lake Champlain eastward. This they did so expeditiously that they arrived at the fort almost a fortnight before the division of the army which they were to join was ready to march on Montreal. With the surrender of the latter city the following September, the war in the New World was prac-

[1] *Provincial Papers,* vol. vi, pp. 621, 702, 704, 707. For wages of the men and muster rolls see *ibid.,* vol. vi, pp. 713, 714, 739, 743. Also Adjutant General's Report, 1866, vol. ii.

tically over and the great struggle between the French and the English for supremacy in North America was at an end.[1]

As the services of the royal troops in America however were needed in Europe, the colonies were now called upon to furnish men to supply their places as it was necessary, in order to hold what had been already gained, to keep troops posted at various strategic points until peace was concluded between the contending powers. As each colony was requested to raise two-thirds as many men as were promised in 1760, the New Hampshire assembly in 1761 and again in 1762 agreed to furnish the quota assigned, namely 534 men. Furthermore, it voted to furnish 51 men for service during the winter months. Moreover, in 1762 it also authorized the enlistment of 143 others, which General Amherst asked for as New Hampshire's quota of recruits for the royal regiments that were then in service but deficient in strength. Now that the glory of conquest was over, however, the governor found it more difficult than ever to find men willing to enlist. Volunteers came forward very slowly, notwithstanding the fact that special inducements were offered them. Increasing the bounty and augmenting the men's wages did little good. Securing the men by an equitable draft from the provincial regiments was suggested as the only effective method, but this the assembly would not allow. The result was that the full number of men asked for could not be raised. Those, however, who did enlist were sent to such posts as the commanding officer of the British forces ordered.[2]

With the ratification of the treaty of Paris in 1763 the

[1] *Provincial Papers*, vol. vi, pp. 735, 739, 743, 745, 787, 905 *passim*. Col. Goffe was in command of the New Hampshire regiment.

[2] *Provincial Papers*, vol. vi, pp. 787, 791, 796, 797, 814, 817, 822, 823, 825, 827, 836, 841, 848, 850, 851, 853, 873, 880 *passim*.

war was formally brought to a close. As England was confirmed in the possession of the French territory she then occupied, the fear of Indian raids on the border was forever removed and the province entered upon an era of peace which continued until the war for Independence began in 1775.

Notwithstanding the long periods of war, however, and the uncertainty which long existed over titles to land, New Hampshire during the colonial era had steadily increased in population. Back in 1641 the number of inhabitants living within the limits of Mason's grant did not exceed 1000 while in 1679, when the royal province was established, the number was less than 3000. On account of the nature of hostilities and the exposed position of the province, the ratio of increase during King William and Queen Anne's Wars was small. By 1720, however, the population was a little more than double that of 1679 and by 1730 it had increased to 10,000. From that time on there was a more rapid growth. When the last war with France began the province is said to have contained 30,000 people and four years after its close it had 52,700. During the next eight years the increase appears to have been about 5000 a year. According to the census of 1773 there were 72,092 inhabitants in the province and according to that of 1775, 82,200.[1]

* *Laws of New Hampshire*, vol. i, *preface; Provincial Papers*, vol. iv, p. 532; vol. vii, pp. 170, 780; vol. x, pp. 636, 689; Belknap, *History of New Hampshire*, vol. iii, pp. 177, 344, 346.

APPENDIX

ROYAL COMMISSIONS.

Commission to.	Issued.	Office assumed under it.
President John Cutt.[1]	Sept. 18, 1679.	January 21, 1680.
Lt.-Gov. Edward Cranfield.	May 9, 1682.	Oct. 4, 1682.
President Joseph Dudley.	October 8, 1685.	May 25, 1686.
Gov. Sir Edmund Andros.[2]	June 3, 1686.	Dec. 20, 1686.
Gov. Samuel Allen.[3]	March 1, 1692.	Sept. 15, 1698.
Lt.-Gov. William Partridge.	June 26, 1696.	Dec. 14, 1697.
Gov. Lord Bellomont.	June 18, 1697.	July 31, 1699.
Gov. Joseph Dudley.	April 1, 1702.	July 13, 1702.
Lt.-Gov. John Usher.	June 10, 1703.	Oct. 22, 1703.
Gov. Eliseus Burgess.[4]	Early in 1715.	
Lt.-Gov. George Vaughan.[5]		Oct. 13, 1715.
Gov. Samuel Shute.	June 15, 1716.	Oct. 17, 1716.
Lt.-Gov. John Wentworth.[6]	Sept. 12, 1717.	Dec. 7, 1717.
Gov. William Burnet.[7]		Nov. 2, 1728.
Gov. Jonathan Belcher.	January 28, 1730.	August 25, 1730.
Lt.-Gov. David Dunbar.	Feb. 27, 1731.	June 24, 1731.
Gov. Benning Wentworth.[6]	July 3, 1741.	Dec. 13, 1741.

[1] Upon Cutt's death in March, 1681, Richard Waldron became president. He officiated as such until Cranfield arrived in October, 1682. The latter left the province the middle of May, 1685, whereupon Walter Barefoot became the executive head of the government, and continued as such until Dudley took the oath of office in May, 1686.

[2] Andros later received a second commission, dated April 7, 1688. He was deposed by the people of Boston, April 18, 1689.

[3] In Allen's commission, John Usher was named Lieutenant-Governor. He came over and took the oaths of office on August 13, 1692. He was superseded by William Partridge, but received a reappointment in June, 1703. Allen did not come over himself and assume the government until 1698.

[4] Gov. Burgess resigned soon after being appointed, and never came to New Hampshire. In the copy of a draft of his commission in the Public Record office in London, the dates in the body of the document are blank, but in the margin is written February 8, 1715.

[5] No copy of any commission to Vaughan has yet been found. He was suspended by Gov. Shute, September 30, 1717, see, *supra*, p. 91.

[6] As the death of the sovereign set a time-limit to the life of the commission, executives at such times found it necessary, in order to keep their places, to obtain a reappointment. Sometimes they failed to secure it, others being appointed in their stead. After the death of George I, Lt.-Gov. Wentworth succeeded in obtaining a reappointment, the new commission being dated October 17, 1727, and after the death of George II, Gov. Benning Wentworth also was re-appointed, his commission bearing the date of April 4, 1761.

[7] In the draft of his commission in the Public Record office in London, the date in the margin is December 19, 1727. His commission as governor of New York had been formally revoked October 4, 1727.

Lt.-Gov. John Temple.	June 15, 1761.	January 19, 1762.
Gov. John Wentworth.[1]	August 11, 1766.	June 13, 1767.

SPEAKERS HOUSE OF REPRESENTATIVES, 1692–1775.

Person chosen.[2]	Presented for approval.
Richard Martin	October 5, 1692.
John Gilman	March 2, 1693.
John Pickering	October 18, 1693.
George Jaffrey	November 2, 1694.
George Jaffrey	May 16, 1695.
George Jaffrey	November 6, 1695.
John Plaisted	September 16, 1696.
John Pickering	June 5, 1697.
John Pickering	December 28, 1697.
Henry Dow	January 5, 1698.
John Pickering	April 6, 1698.
John Pickering	January 5, 1699.
Samuel Penhallow	August 7, 1699.
John Pickering	July 17, 1702.
Daniel Tilton	January 12, 1703.
John Pickering	July 1, 1703.
John Pickering	February 8, 1704.
Mark Hunking	June 30, 1709.
Richard Gerrish	June 19, 1710.
Richard Gerrish	April 20, 1715.
Richard Gerrish	November 8, 1715.
Richard Gerrish	August 21, 1716.
John Plaisted	January 10, 1717.
Thomas Packer	May 13, 1717.
Joshua Peirce	September 26, 1719.

[1] For the text of most of the commissions and a verification of the above dates, see, *Laws of New Hampshire, Province Period*, vol. i, pp. 2. 48, 93, 146, 226, 501, 515, 612; *New Hampshire Provincial Papers*, vol. i, pp. 373, 433, 585, 590; vol. ii, pp. 1. 19, 57, 70, 277, 259, 305, 313, 366, 406, 407, 677, 678, 679, 695, 711, 712; vol. iv, pp. 17, 600; vol. v, p. 87; vol. vi, pp. 630, 908; vol. vii, pp. 8, 24: vol. xviii, pp. 12, 17, 24, 575; vol. xix, pp. 655, 687, 689: *Province Laws*, edition 1771, *preface*. For short biographical sketches of the various executives, see, *Laws of New Hampshire, Province Period*. vol. i, *preface*, xc *et seq.*: *New Hampshire Provincial Papers*, vol. i, p. 590; vol. ii, pp. 70, 313, 680, 695; vol. iii, pp. 637, 658; vol. iv, pp. 504, 561, 587, 599, 794; vol. vii, 124, 126, 387, 395. For fac-simile signatures of some of them, see, *Provincial Papers*, vol. vii, p. 396.

[2] Usually the governor promptly approved the house's choice for speaker, see *supra*, p. 137.

Peter Weare . . . . . July 2, 1722.
Nathaniel Weare . . . . . December 13, 1727.
Nathaniel Weare . . . . . April 9, 1728.
Andrew Wiggin . . . . . April 18, 1728.
Andrew Wiggin . . . . . February 3, 1731.
Andrew Wiggin . . . . . August 29, 1732.
Andrew Wiggin . . . . . January 1, 1734.
Andrew Wiggin . . . . . October 8, 1734.
Andrew Wiggin . . . . . May 2, 1735.
Andrew Wiggin . . . . . April 21, 1736.
Andrew Wiggin . . . . . March 9, 1737.
Andrew Wiggin . . . . . February 1, 1740.
Andrew Wiggin . . . . . July 31, 1740.
Andrew Wiggin . . . . . February 27, 1741.
Andrew Wiggin . . . . . January 14, 1742.
Nathaniel Rogers . . . . . January 26, 1745.
Ebenezer Stevens . . . . . June 5, 1745.
Richard Waldron . . . . . January 5, 1749.
Meshech Weare . . . . . September 22, 1752.
Henry Sherburne . . . . . October 23, 1755.
Henry Sherburne . . . . . November 16, 1758.
Henry Sherburne . . . . . January 29, 1762.
Henry Sherburne . . . . . March 12, 1762.
Henry Sherburne . . . . . May 22, 1765.
Peter Gilman . . . . . July 11, 1766.
Peter Gilman . . . . . May 18, 1768.
John Wentworth . . . . . May 23, 1771.
John Wentworth . . . . . April 8, 1774.
John Wentworth . . . . . May 5, 1775.

ASSEMBLIES, 1692–1775.

Convened.[1]	Dissolved.	Convened.	Dissolved.
Oct. 4, 1692;	Oct. 7, 1692.	Feb. 3, 1731;	May 18, 1732.
March 1, 1693;	Aug. 5, 1693.	Aug. 29, 1732;	March 10, 1733.
Oct. 18, 1693;	May 24, 1694.	Jan. 1, 1734;	Jan. 23, 1734.
Nov. 1, 1694;	May 8, 1695.	Oct. 8, 1734;	Oct. 22, 1734.
May 15, 1695;	Nov. 2, 1695.	April 30, 1735;	May 17, 1735.
Nov. 6, 1695;	July 23, 1696.	April 21, 1736;	May 12, 1736.
Sept. 16, 1696;	Sept. 24, 1696.	March 8, 1737;	Nov. 17, 1738.
June 8, 1697;	Dec. 15, 1697.	Oct. 24, 1739;	Feb. 26, 1740.
Dec. 28, 1697:	March 11, 1698.	July 21, 1740;	Aug. 7, 1740.
April 5, 1698;	Oct. 11, 1698.	Feb. 12, 1741;	March 18, 1741.
Jan. 5, 1699;	Jan. 7, 1699.	Jan. 13, 1742;	Jan. 1, 1745.
Aug. 7, 1699;	Sept. 9, 1702.	Jan. 24, 1745;	May 3, 1745.
Jan. 12, 1703;	April 13, 1703.	June 5, 1745;	June 4, 1748.
June 23, 1703;	Dec. 11, 1703.	Jan. 3, 1749;[3]	Jan. 4, 1752.
Feb. 8, 1704;	June 27, 1709.	Sept. 19, 1752;	Sept. 18, 1755.
June 30, 1709;	Nov. 5, 1714.	Oct. 23, 1755;	Oct. 19, 1758.
April 20, 1715;	Sept. 15, 1715.	Nov. 14, 1758;	Nov. 3, 1761.
Nov. 8, 1715;	May 19, 1716.	Jan. 19, 1762;	Feb. 4, 1762.
Aug. 21, 1716;	Dec. 5, 1716.	March 10, 1762;	March 8, 1765.
Jan. 10, 1717;	Jan. 28, 1717.	May 21, 1765;	March 24, 1768.
May 13, 1717;[2]	June 28, 1722.	May 17, 1768;	April 13, 1771.
July 2, 1722;	Nov. 21, 1727.	May 22, 1771;	March 7, 1774.
Dec. 13, 1727;	March 27, 1728.	April 7, 1774;	June 8, 1774.
April 9, 1728;	Dec. 3, 1730.	May 4, 1775.[4]	

[1] The dates given mark the beginning and end of each assembly, *i. e.* the day when it first convened and the day when it was formally dissolved. They do not refer to any adjournments or prorogations. In order to verify the dates and facilitate reference to the work of the various assemblies, see *Laws of New Hampshire, Province Period*, vol. i, *517, 545, 565, 572, 575, 577, 581, 582, 584, 593, 594, 595, 604, 635, 637; New Hampshire Provincial Papers*, vol. ii, 286; vol. iii, 1, *2*, 4, *6, 13, 23, 28*, 32, *33*, 41, *42, 48*, 56, *60*, 63, *64*, 238, 240, 245, *246, 270*, 387, *390*, 578, *579, 599*, 647, *648*, 657, *658*, 676, *680*, 740, 782; vol. iv, 44, *45, 138, 212, 226, 260, 274, 282, 423, 460, 467, 484, 524*, 585, *588*, 624, *628*, 645, *646*, 667, *671*, 680, 681, 698, *700*, 713, *715;* vol. v, 9, *10*, 28, 67, 68, 73, 85, *134, 259, 322*, 590, 784; vol. vi, *69, 72, 74, 79*, 125, *128*, 436, *437*, 685, *687*, 799, *801*, 807, *809;* vol. vii, 58, *59, 114, 149*, 165, *171, 239*, 285, *286, 297, 310*, 352, *359*, 369, *370*. Except for a few assemblies, a fairly complete list of those returned as assemblymen in response to the governor's writs of election may be obtained by referring to the pages above which are in italic type. For the method of summons and the form of warrant, see *ibid.*, vol. ii, 86: vol. xvii, 626, 665; vol. xviii, 354, 602; *Laws of New Hampshire, Province Period*, vol. i, 637.

[2] On September 24, 1717, Lt.-Gov. Vaughan dissolved the assembly, contrary to the governor's orders. This the governor held was illegal, so that it was convened again, see *supra*, p. 91.

[3] As this assembly was never formally organized, it could transact no business, see *supra*, p. 139.

[4] On July 18, 1775, Gov. Wentworth adjourned the assembly to September 28, 1775, when by proclamation he prorogued it to April 24, 1776. By that time, however, the government was in other hands.

ERRATA.

On page 80, line 21, the years there given should be 1749 and 1752 respectively, while on line 25, the year should be 1749, see *post*, page 139.

On page 84, the name Elias Burgess, on line 2 and 17, should read Eliseus Burgess.

On page 125, note one should read, "there were 91 councillors in all appointed. The average age of 54 of them at death was 70."

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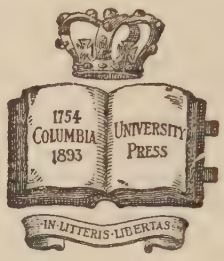

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